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32.	**Annexure R-31** - A True Copy of the order dated 06.02.2017 passed by this Hon'ble Court in the case of *Lokniti Foundation v. Union of India* bearing W.P. (C) No. 607 of 2016.	**954-958**
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ANNEXURE R/19
900

Bihar board 'topper' Ruby Rai arrested after appearing for re-test

Bihar board 'topper' Rubi Rai, who had triggered a controversy by telling a television channel political science pertained to cooking, was arrested on Saturday after appearing before the Bihar School Examination Board.

Updated: Jun 25, 2016 20:25 IST

Bihar board 'topper' Rubi Rai, who had triggered a controversy by telling a television channel political science pertained to cooking, was arrested on Saturday after appearing before the Bihar School Examination Board for a re-test.

All 14 toppers of the board, except Rai, had earlier appeared for re-assessment before a panel of experts and the anti-corruption wing of the BSEB which tried to find out if they used impersonation, bribery or other fraudulent means to pass the exam.

Rai had failed to appear in the re-test twice on June 3 and June 17. She informed the board she was not well.

Saurabh Shreshtha, a Science topper, had said in the sting: "Most reactive element in the periodic table is Aluminium". Rai had scored 444 out of 500 marks in the arts stream and Shreshtha 485 out of 500 in Science stream. Both studied at the VR College in Vaishali district.

According to police officials, the Patna civil court has issued a non-bailable warrant of arrest against four toppers including Rai.

The VR college director-cum-principal Bachcha Rai was arrested early this month and was lodged in Beur jail in Patna. So far, nearly 20 people have been arrested by a special investigation team.

The results of Rai and others were put on hold following the TV sting which suggested that education in Bihar continues to be a dubious affair with the possibility that cheating and fraud continue at a large scale.

The BSEB claimed this year that Class 12 exams were conducted free of cheating, citing a drastic fall in the pass percentage as the proof. Till last year, mass cheating in board exams was reported.

Former BSEB chairman Lalkeshwar Prasad Singh and his wife Usha Sinha were recently arrested in connection with the issue.

ANNEXURE- R/20
901

SSC exam: One held for impersonation, 25 denied entry into centres for coming late

According to the police, when answer sheets were being handed over to the candidates, an examination official observed some inscriptions written on Mukesh's left thumb

By: Express News Service | Chandigarh | Published August 10, 2015 1:36 am

One person was arrested for impersonating a candidate during the Staff Selection Commission (SSC) CGL Tier 1 examination on Sunday.

The police identified the accused as Mukesh, a resident of Rohtak who was allegedly impersonating a candidate called Sandeep, a resident of Shimla. He was taking the exam at Government Model Senior Secondary School, Sector 40.

According to the police, when answer sheets were being handed over to the candidates, an examination official observed some inscriptions written on Mukesh's left thumb. On further inquiry, they discovered that he was impersonating another candidate.

Inspector Ranjodh Singh, SHO, Sector 39 police station, said: "We have arrested the accused. A police team has been sent to Shimla to nab Sandeep, and we are trying to find out if there was any money paid to him for impersonation."

Mukesh will be presented before a local court on Monday and a case was registered under sections 419 (punishment for cheating by personation)

and 420 (cheating) of the Indian Penal Code at the Sector 39 police station.

In a related development, around 25 candidates in the city who had come from the neighbouring states were denied entry into the centres as they reported late. Irked over refusal to write the exam, the candidates created a ruckus outside the exam centres, forcing the police to swing into action and control the situation. The students requested the officials to allow them to take their exam in the evening session or sit for the next exam scheduled to be held on August 16 but the officials refused.

Principal of Post-Graduate Government College for Girls, Sector 42, Mani Bedi said, "There were clear instructions from the Staff Selection Commission office that we should not allow students after 9.30 am but we were lenient enough and allowed them till 9.40 am. It was not the college's decision to ban entry of students. The SSC officials got the gates closed at 9.40. There were six to seven students who could not take the exam."

One of the candidates, Naveen Basati, who had come to take the exam from Amritsar, said, "I had started from Amritsar at 4 am and reached the bus stand in Sector 43 at 9 am. It was raining at that time but I managed to reach the college, I was late by seven minutes. I requested the officials to allow me but they refused."

Another candidate, Ankita, who had come from Ludhiana, said, "The officials should understand the problems of candidates coming from far-off places. We were not making any excuses for coming late, we had a genuine problem and we were just five minutes late."

ANNEXURE- R1
904

4 arrested for impersonation in medical entrance test

May 8, 2017 | UPDATED 00:50 IST

Panaji, May 7 (PTI) The Goa police today arrested four Bihar youths from two different examination halls in the state for impersonating during the National Eligibility-cum- Entrance Test (NEET) held today for admission to medical courses.

The four youths were identified as Randhir Singh (21), Diwakar Kumar (22), Mohammad Chanchal (28) and Abhishekh Singh (23) ?- all residents of Bihar.

"Two youths were arrested by the Verna police when they were found impersonating as two students at a private school located in Vasco city," a senior police official said.

Randhir Singh and Diwakar Kumar were picked up from the examination centre.

"During interrogation, they told us that two more of their accomplices were appearing in the exam at another private school located at Old Goa near here," he added.

All the four youths were booked under sections 419 (cheating by personation), 420 (cheating) and 511 (attempting to steal someone's right) of the IPC. Around 2,000 appeared in NEET in the state.

NEET is being held this year not only for admissions to medical and dental programmes, but also for homoeopathy and ayurveda courses.

This is unedited, unformatted feed from the Press Trust of India wire.

ANNEXURE-R/2
905

Police uncover entrance scam 'inspired by Munnabhai MBBS'

At least 8 people are suspected to have taken money to appear for aspirants in PG medical entrance exam; multiple raids conducted across the country.

Written by **Mahender Singh Manral** | New Delhi | Published:February 12, 2017 3:55 am

Over the last one week, teams of the Delhi Police Crime Branch have been busy conducting raids in Delhi, Bengaluru and other cities after they discovered that at least eight people allegedly took the national-level Post Graduate Medical Entrance Examination, held in November, 2016, on behalf of someone else. The raids, police sources told The Sunday Express, could shed light on an "inter-state racket" wherein the accused "charged each candidate between Rs 5 lakh and Rs 10 lakh for taking the exam on their behalf".

Police sources also said that those running the racket appear to have "drawn inspiration from the Bollywood movie, Munnabhai MBBS". Sources said a team of the Central Range got to work after registering a case under IPC sections 419 (impersonation), 420 (cheating) and 34 (criminal intimidation) at the Crime Branch police station on February 2 against some medical aspirants for trying to secure admission in medical colleges with help from "dummy candidates".

"Police received information on January 20 that some people tried to crack the online medical entrance examination by impersonating the

aspirants. After conducting an initial probe, teams were formed to dig deeper and start conducting raids," police sources said. Joint Commissioner of Police (Crime Branch) Ravindra Singh Yadav was not available for comment, saying it is a "confidential matter".

A team comprising three inspectors was formed under the supervision of an ACP-rank officer, and they approached those in-charge of the examination centres where the alleged crime is supposed to have taken place. Sources said they have started conducting raids to apprehend the candidates as well as the impersonators. "Investigation revealed that the impersonators, too, are students of various medical colleges," police sources said.

In 2012, the Crime Branch had busted a racket involving entrance examinations to the postgraduate course at AIIMS. The modus operandi involved scanning question papers using high-end mobile phones and feeding answers to candidates using Bluetooth technology.

Past

2017: Two men held from Gurgaon for appearing on behalf of an aspirant in an exam to recruit primary teachers

2016: 12 impersonators held for appearing in the Uttarakhand Ayurveda Pre-Medical Test

2013: CBI arrested several persons in connection with Foreign Medical Graduates Examination

2010: Two candidates trying to clear UP PG medical entrance examination nabbed

907
ANNEXURE R/23

PRIME MINISTER'S OFFICE

South Block, New Delhi – 110 011

Please find enclosed a copy of Records of Discussion of the meeting chaired by the Principal Secretary to PM on **"Aadhar Enrolment in Post Offices and Bank Branch Premises"** on 29.09.2017 at 04.00 PM, Prime Minister's Office, South Block, New Delhi, for further necessary action.

(Brijesh Pandey)
Deputy Secretary
Tel. 23013586

Finance Secretary
Secretary, D/o Financial Services
Secretary, M/o Electronics & Information Technology
Secretary, D/o Posts
CEO, UIDAI

PMO ID no. 460/32/C/14/2017-ES.1 Dated: 06.10.2017

RoD of the meeting taken by the taken by the Principal Secretary to PM on 'Aadhaar Enrolment in Post Offices and Bank Branch Premises.

Date: 29.09.2017 **Time: 04.00 p.m.**
Venue: PMO, South Block

List of the participants is **Annexed.**

2. The **main points of discussion** and the decisions taken in the meeting are as under:

(i) UIDAI to phase out all private agencies for enrolment and updation of Aadhaar by the end of December, 2017. Thereafter, only Bank Branches and Post Offices will be locations for Aadhaar enrolment and updataion. ***(Action by: UIDAI)***

(ii) UIDAI may also have consultation with the States as they might have outsourced work of Aadhaar enrolment. The effort should be to phase out outside agencies without causing inconvenience to the general public in enrolment and updation. ***(Action by: UIDAI)***

(iii) UIDAI to send monthly progress reports on phasing out outside private agencies in enrolment and updation. ***(Action by: UIDAI)***

(iv) D/o Posts has opened 803 update centres till date. They will be opening a total of 14,200 Aadhaar enrolment centres by December, 2017. The centers shall be operated by Department of Posts directly without involvement of any private Aadhaar enrolment agencies The monthly target for opening centres should be fixed for next 3-months.
(Action by: D/o Posts)

(v) Rs.200 Crores will be released under Demand No.32 of NITI Aayog **immediately**. The proposal to be submitted by UIDAI and D/o Posts.
(Action by: UIDAI / DoP/ DOE)

(vi) Banks shall complete the task of setting up Aadhaar enrolment and update centers in15,200 Bank Branches by Oct 31,

2017. The centers shall be operated by banks directly inside bank branches without involvement of any private Aadhaar enrolment agencies. **(Action by: DFS/UIDAI)**

(vi) The existing authentication devices for Aadhaar authentication should be replaced with registered devices by user agencies including banks in a time-bound manner. ***(Action by: UIDAI/DFS)***

(vii) The consolidated kit for enrolment and updation should be made available on the GEM platform. Issues on this matter should be resolved by MeitY to ensure that kits are available on the GEM platform. ***(Action by: MeitY)***

(vii) UIDAI, in consultation with the D/o Posts, may revise the reimbursement charges for enrolment and updation at Post Offices. DoE to work out the modalities for reimbursing this expenditure to UIDAI/DOP. ***(Action by: UIDAI / DoP / DoE)***

The meeting ended with a vote of thanks to the chair.

*****

Annexure

List of participants:

1 Shri A.N. Nanda, Secretary, D/o Posts
2 Shri Ajay Sawhney, Secretary, MeitY
3 Dr. Ajay Bhushan Pandey, CEO, UIDAI
4 Shri Rajiv Kumar, Secretary, D/o Financial Services
5 Shri Pramod Kumar Das, Addl. Secretary, D/o Expenditure
6 Smt Usha Chandrasekhar, Member(Operation), Department of Posts

From PMO:

1. Shri Tarun Bajaj, Addl. Secretary
2. Shri Anurag Jain, Joint Secretary
3. Shri Brajendra Navnit, Joint Secretary
4. Shri Brijesh Pandey, Deputy Secretary

***

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99

910

ANNEXURE- R/24

भारत का राजपत्र

The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (i)

PART II—Section 3—Sub-section (i)

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संचार एवं सूचना प्रौद्योगिकी मंत्रालय

(इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी विभाग)

(भारतीय विशिष्ट पहचान प्राधिकरण)

अधिसूचना

नई दिल्ली, 11 दिसम्बर, 2015

सा. का. नि. 993(अ).—सूचना प्रौद्योगिकी अधिनियम, 2000 (2000 का 21[वां]) के अनुच्छेद 70 के उप-अनुच्छेद (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार, एतद्द्वारा घोषित करती है कि यू.आई.डी.ए.आई. की केंद्रीय पहचान डेटा भंडार (सी.आई.डी.आर.) सुविधाएं, इसका हार्डवेयर और सॉफ्टवेयर, सूचना परिसम्पत्तियां, लॉजिस्टिक अवसंरचना और डिपेंडेंसिज़ आदि जो कि यू.आई.डी.ए.आई. (भारतीय विशिष्ट पहचान प्राधिकरण) के लोकेशन्स पर संस्थापित हैं – उन्हें सूचना प्रौद्योगिकी अधिनियम 2000 के उद्देश्य से संरक्षित सिस्टम माना जाएगा।

आई.टी. एक्ट 2000 (संशोधित 2008) के अनुच्छेद 70 के उप-अनुच्छेद-2 के अनुसार प्राधिकृत कार्मिकों, जिनके पास कार्य आधारित पहुंच होगी, केवल उन्हीं को ही यू.आई.डी.ए.आई.-सी.आई.डी.आर. सुविधाओं तक जाने का अधिकार होगा:

1. यू.आई.डी.ए.आई. के पदनामित आधिकारी और स्टाफ।
2. मैनेज्ड सर्विस प्रोवाइडर (एम.एस.पी.) के अनुबंधित सदस्य, जिन्हें यू.आई.डी.ए.आई. ने प्राधिकृत कर रखा हो।
3. अन्य प्राधिकृत थर्ड पार्टी वेंडर्स और इसके पार्टनर्स।
4. यू.आई.डी.ए.आई. के बिजिनेस पार्टनर्स।

[फा. स. डी- 10(36)/2015-ईजी-II],

राजीव कुमार, संयुक्त सचिव

911

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Electronic and Information Technology)

(UNIQUE IDENTIFICATION AUHORITY OF INDIA)

NOTIFICATION

New Delhi, the 11th December, 2015

G.S.R. 993(E).— In exercise of the powers conferred by sub-section (1) of Section 70 of the Information Technology Act, 2000 (21 of 2000), the Central Government hereby declares the UIDAI's Central Identities Data Repository (CIDR) facilities, Information Assets, Logistics Infrastructure and Dependencies Installed at UIDAI (Unique Identification Authority of India) locations to be Protected System for the Purpose of Information Technology Act 2000.

Authorised personnel as per Sub-section (2) of Section 70 of IT Act 2000 (amended 2008) having role based access to UIDAI-CIDR facility are:

1. Designated UIDAI officers & Support Staff.
2. UIDAI authorised team members of contracted Managed Service Provider (MSP).
3. Other authorised third party Vendors and its partners.
4. UIDAI authorised business partners.

[F. No. 10(36)/2015-EG-II]

RAJIV KUMAR, Jt. Secy.

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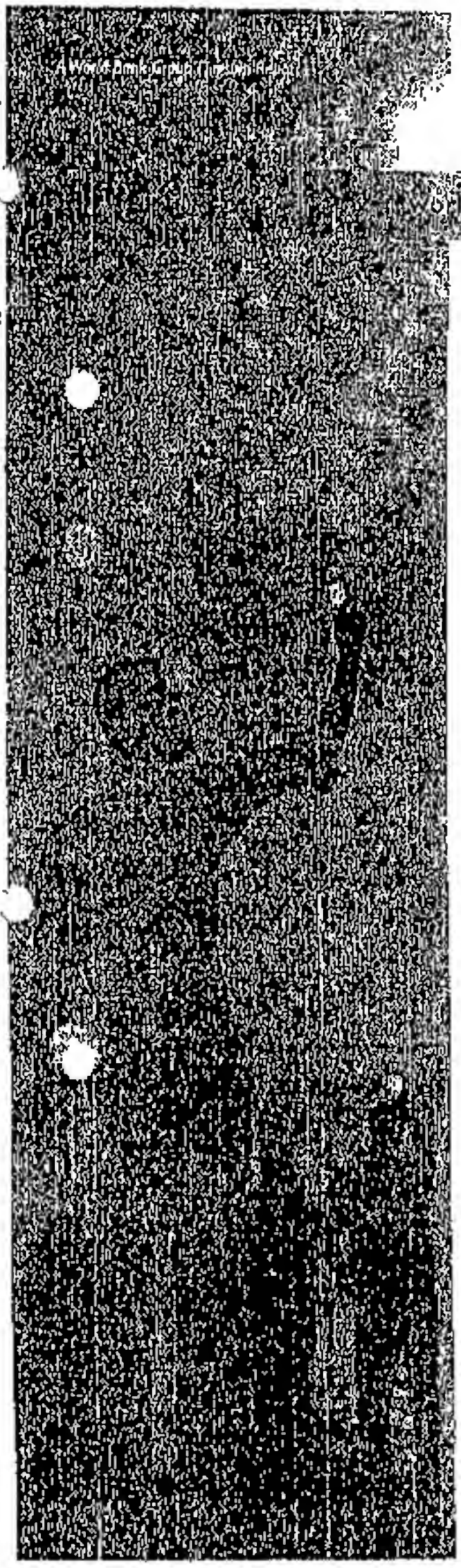
ANNEXURE R/25

World development report 1(6)2

DIGITAL DIVIDENDS

913



World Development Report

DIGITAL DIVIDENDS

WORLD BANK GROUP

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Cover photo: Title 2013 World Press Photo of the Year shows migrants crowding the right shore of Djibouti City in an attempt to capture inexpensive cellphone signals from neighboring Somalia. © John Stanmeyer/National Geographic Creative. Used with the permission of John Stanmeyer/National Geographic Creative. Further permission required for reuse.

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Contents

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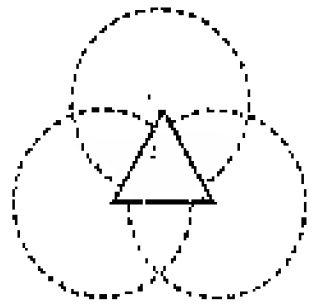


OVERVIEW

Strengthening the analog foundation of the digital revolution

Digital technologies have spread rapidly in much of the world. Digital dividends—the broader development benefits from using these technologies—have lagged behind. In many instances digital technologies have boosted growth, expanded opportunities, and improved service delivery. Yet their aggregate impact has fallen short and is unevenly distributed. For digital technologies to benefit everyone everywhere requires closing the remaining digital divide, especially in Internet access. But greater digital adoption will not be enough. To get the most out of the digital revolution, countries also need to work on the 'analog complements'—by strengthening regulations that ensure competition among businesses, by adapting workers' skills to the demands of the new economy, and by ensuring that institutions are accountable.

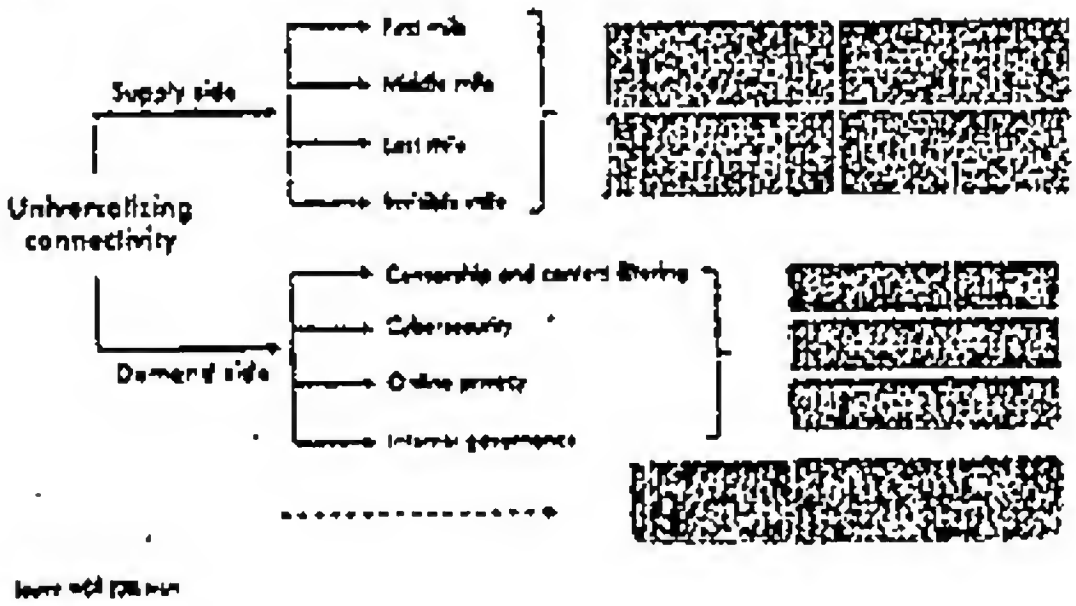
Digital technologies—the Internet, mobile phones, and all the other tools to collect, store, analyze, and share information digitally—have spread quickly. More households in developing countries own a mobile phone than have access to electricity or clean water, and nearly 70 percent of the bottom fifth of the population in developing countries own a mobile phone. The number of Internet users has more than tripled in a decade—from 1 billion in 2005 to an estimated 3.4 billion at the end of 2015.[1] This means that businesses, people, and governments are more connected than ever before (figure O.1). The digital revolution has brought immediate private benefits—easier communication and information, greater convenience, free digital products, and new forms of leisure. It has also created a profound sense of social connectedness and global community. But have massive investments in information and communication technologies (ICTs) generated faster growth, more jobs, and better services? Indeed, are countries reaping sizable digital dividends?

Technology can be transformational. A digital identification system such as India's Aadhaar, by overcoming complex information problems, helps willing governments to promote the inclusion of disadvantaged groups. Alibaba's business-to-business e-commerce site, by significantly reducing coordination costs, boosts efficiency in China's economy and arguably the world's. The M-Pesa digital payment platform, by exploiting scale economies from automation, generates significant financial sector innovation, with great benefits to Kenyans and others. Inclusion, efficiency, innovation—these are the main mechanisms for digital technologies to promote development.

Although there are many individual success stories, the effect of technology on global productivity, expansion of opportunity for the poor and the middle class, and the spread of accountable governance has so far been less than expected (figure O.2).[2] Firms are more connected than ever before, but global productivity growth has slowed. Digital technologies are changing the world of work, but labor markets have become more polarized and inequality is rising—particularly in the wealthier countries, but increasingly in developing countries. And while the number of democracies is growing, the share of free and fair elections is falling. These trends persist, not because of digital technologies, but in spite of them.

So, while digital technologies have been spreading, digital dividends have not. Why? For two reasons. First, nearly 60 percent of the world's people are still offline

Figure O.20 A policy framework for improving connectivity



SPOTLIGHT 4

ENABLING DIGITAL DEVELOPMENT

Digital identity

Individuals need mechanisms to identify one another and to identify themselves to their communities and governments. While this point may be obvious, it is profoundly important for people's welfare. Simple mechanisms—familiarity, appearance, perhaps vouching by an elder—are sufficient in small, intimate communities. Wider societal and economic exchange requires more formal systems—traditionally physical tokens, such as a paper-based identification (ID) card that includes the signatures or representations of their holders, and is verified against documents stored in a central registry. But these formal systems are failing in the developing world. Nearly 2.4 billion people are not registered. They are usually the poorest and most marginalized members of society; about one-quarter are children. They are excluded from a range of rights and services, such as health care, enrollment in school, social welfare, and financial services.

Identity should be a public good. Its importance is now recognized in the post-2015 development agenda, specifically as a Sustainable Development Goal (SDG) target to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels."[1] One of the indicators is to "provide legal identity for all, including birth registration, by 2030." The best way to achieve this goal is through digital identity (digital ID) systems, central registries storing personal data in digital form and credentials that are digital rather than physical, the digital means to authenticate the identity of their holder. India's massive Aadhaar program, which has enrolled over 900 million people, has dispensed with the physical ID card altogether. Estonia has created an electronic legal representation of an individual. Through the use of personal identification numbers (PINs) to authenticate the holder against a digital card credential, people can access public services remotely and even sign legal documents and contracts with the same legal validity as if they were signed in person.

Contributed by Joseph Atick, Marianne Dahan, Alan Gelb, and Mic Nuzbit.

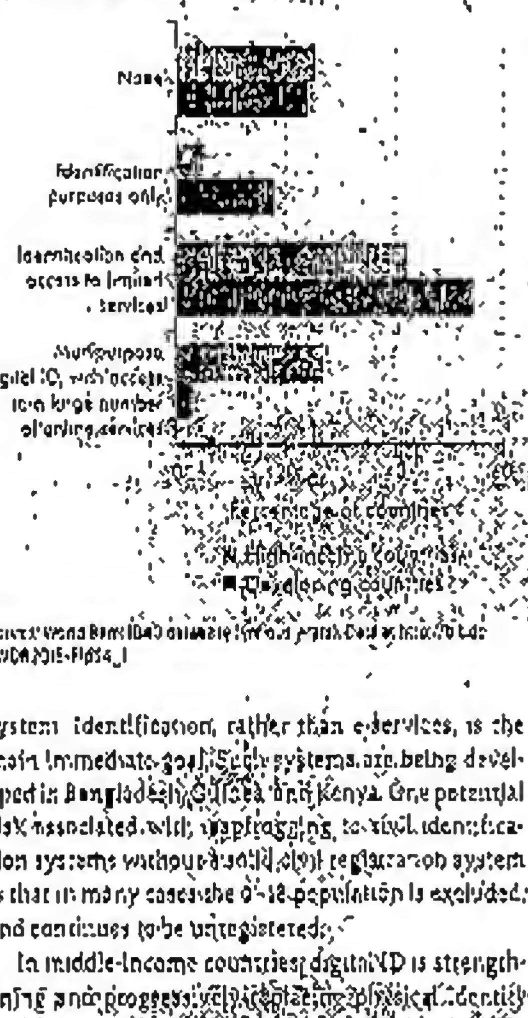
Country-specific use of digital identity

Most developing countries have some form of digital ID scheme tied to specific functions and serving a subset of the population, but only a few have a multipurpose scheme that covers the entire population. Eighteen percent of developing countries have a scheme that is used for identification purposes only, 45 percent have digital IDs that are used for specific functions and services like voting, cash transfers, or health; and only 3 percent have foundational ID schemes that can be used to access an array of online and offline services (figure S4.1). Twenty-four percent of developing countries have no digital ID system.

Although the concept of digital ID is universal, it plays somewhat different roles depending on the country context. In high-income countries, digital ID represents an upgrade from well-established, robust legacy physical ID systems that have worked reasonably well in the past. Belgium, Estonia, Finland, France, the Republic of Korea, and Singapore are some of the countries that are leveraging existing physical identity infrastructure to create digital ID ecosystems, enabling them to deliver public services more efficiently.

Developing countries, by contrast, often lack robust civil registration systems and physical IDs and are building their ID systems on a digital basis, leapfrogging the more traditional physically based

Figure S4.1 Different types of digital ID schemes across countries



Source: World Bank ID4D dataset [illegible]

system identification, rather than e-services, is the main immediate goal. Such systems are being developed in Bangladesh, Guinea, and Kenya. One potential risk associated with leapfrogging to civil identification systems without a solid civil registration system is that in many cases the 0–18 population is excluded and continues to be unregistered.

In middle-income countries, digital ID is strengthening and progressively replacing physical identity services while supporting the provision of some e-services. Successful examples are found in Albania, India, Moldova, and Pakistan.

Evidence of impact

Evidence of the impact of digital ID is still largely anecdotal, but there is a growing body of research in at least three key areas—efficient management of social welfare programs, removing ghost workers from the government payroll, and improving the sanctity of elections.

Efficient management of social programs and welfare distribution

Digital IDs enable targeted cash transfers to bank accounts linked to a unique identifier. This ensures that those who are entitled to receive subsidies or benefits are actually getting them. For example, in India's fuel subsidy program, implementing cash transfers to Aadhaar-linked bank accounts to buy liquefied petroleum gas cylinders saved about US$1 billion per year when applied throughout the country.[3] This is just one of many subsidy programs in India that are being converted to direct transfers using digital ID, potentially saving over US$11 billion per year in government expenditures through reduced leakage and efficiency gains.[4] Other examples of the benefits of digital ID in reducing leakages for social protection or security programs, health insurance, and pension schemes due to duplicates, "ghost" beneficiaries, and corruption are occurring in Chile, the Arab Republic of Egypt, Ghana, Indonesia, Pakistan, South Africa, and Turkey.

Removing ghost employees from the government payroll

The budgets of many developing countries suffer from bloated civil service wages, leaving little room for capital investment. For example, the public payroll [illegible] the national budgets of Ghana, Nigeria, and Zimbabwe [illegible] systems imply that many individuals paid from the payroll do not actually work for the government, and may not even be alive.[5] Nigeria recently implemented a digital ID system for civil servants that enabled it to remove about 62,000 such ghost workers, saving US$1 billion annually, and providing a return on investment of nearly 25,000 percent in one year.[6] The impact of ghost workers is even worse in many other countries, ranging from 10 percent to as high as an estimated 40 percent in Zimbabwe, pointing to the substantial fiscal savings and efficiency gains from digital ID.[7]

Improving electoral integrity

Nigeria used digital ID to prevent vote rigging in its 2015 elections. The system [illegible] about 68 million voters, using biometrics [illegible] that [illegible] thus preventing 4 million [illegible]. Although there were some operational [illegible] at the polls, the election was conducted successfully, all votes were cast, and it was difficult to contest the results in the face of the transparency brought about by digital identity. However, other countries, such as Kenya and Somalia, have not reaped the same benefits from the biometric voter IDs.[8] Therefore, this remains an area of further research.

Developing effective digital ID schemes

Digital ID schemes rely on a backbone of connected systems, databases, and civil or population registries. These in turn have been established through a thorough enrollment process of the targeted population.

SPOTLIGHT 4

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SPOTLIGHT 4

Many programs now include the use of both biometric data and traditional biographical data, as well as programs to eliminate duplicate enrollments to help ensure that each individual is only once registered: one identity and one unique identifying number.

The digital record is the basis for issuance of credentials, which may be cards equipped with bar codes or more advanced chip-based smart cards; they can also be single-function (and provide evidence only of identity) or multifunctional, with the card able to act as a bank card, driving license, and so on. India's Aadhaar program dispenses with the card altogether, providing remote authentication based on the holder's fingerprints or iris scan.[9] Online and mobile environments require enhanced authentication features—such as electronic trust services, which include e-signatures, e-seals, and time stamps—to add confidence in electronic transactions.

Mobile devices offer a compelling proposition for governments seeking to provide identity credentials and widespread access to digital services. In Sub-Saharan Africa, for example, more than half of the population in some countries is without official ID, but more than two-thirds of the residents in the region have a mobile phone subscription. The developing world is home to more than 6 billion of the world's 7 billion mobile subscriptions, making this a technology with considerable potential for registration, storage, and management of digital identity.

For a digital ID system to be effective, it must be rooted in a robust legal framework that considers the needs, rights and privacy of the users of the system, clear definitions for the interconnectivity and interoperability with other (administrative or functional) registries, and coordinated investments throughout the country in information and communication technology (ICT) to develop a reliable and secure platform.

Digital identification systems may be developed in response to a specific application (elections, tax, social protection or security, pensions, health insurance and the like), referred to as *functional schemes*.[10] Or they may be developed as universal multipurpose systems capable of supporting the entire range of needs for legal identity across all applications, known as *foundational identity schemes*. The distinction between functional and foundational systems is not immutable; several functional ones evolve to become foundational. In Bangladesh, Mali, and Mexico, voter ID has become de facto national ID. No matter what the country context is, the priority should be to confer identity on all citizens through a universal foundational scheme or through harmonization of the multitude of existing functional systems, so that in their totality they achieve full coverage.

Risks and mitigation

Digital ID schemes tend to be complex, are often politically charged, and are subject to failure to deliver on high expectations. Risks associated with unsuccessful implementation can be mitigated by adopting guidelines that have emerged from the collective experience of digital ID schemes' rollouts around the world.[11] In this respect, several areas of focus emerge as critical:

- *Legal and regulatory concerns* about how to best determine the types, extent, and use of information collected under digital ID schemes; how to safeguard the privacy of personal data; and how to craft new primary legislation, by-rules, to avoid unintended consequences (such as inadvertent exclusions, onerous formalities that could deter individuals from accessing services, or increased rent-seeking involving registration or certificates).
- *Institutional and administrative concerns* about the institutional location of the civil and identification registries, and their interaction with functional registries or line ministries that need to verify or authenticate identities of beneficiaries or clients. The legal or foundational registries are traditionally located in the ministry of interior, justice, or home affairs, and more recently in special-purpose agencies independent of any line ministry (or loosely affiliated with one), and reporting to the center of government. Without effective coordination, there is a risk of a patchwork of competing schemes that would lack interoperability and consistency. The risk of exclusion would also be higher, as participation in functional IDs is a matter of program eligibility and not a birthright, as in foundational schemes.[12]
- *Technological concerns* about working with the private sector to develop a sustainable digital infrastructure that can reach remote areas and prevent exclusion; ensure interoperability and trusted authentication protocols for data exchange among different services and solution providers; and ensure data security, particularly in the use of biometrics, as well as the long term accessibility and security of identity records.
- *Business models and procurement concerns* engendered by technology solutions that are tied to specific vendors, lack of open architecture anchored on modularity and open standards, lack of costing guidance

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identify ghost workers—as in Nigeria, where a digital identification scheme for civil servants removed about 60,000 fictitious workers from the government payroll, saving US$1 billion annually.[x]

Establish population registers

Digital population registers can establish citizen identity and be leveraged later for a variety of applications through appropriate credential verification (see spotlight a). The focus should be on developing the identity database and on the systems to ensure completeness and high quality. Only after the country has developed harmonized identity registers can it legitimately begin to tie e-services and issue the right credentials to support them. In many cases, countries, under vendor pressure, have prematurely procured costly smart cards, which then remained unused as the identity registers had not been developed first. India focused on enrollment and unique identity and launched the program without any smart cards or credentials, just an Aadhaar number communicated to individuals. Now, more than five years later, different programs are issuing application-specific credentials linked to the Aadhaar framework and database.

Scale up nonstate provision of services

Citizens in many low-income countries send their children to nonstate schools (for-profit or not-for-profit) and seek care from private health providers. Nonstate provision raises questions of equity and quality. These risks can be mitigated through regulations, disclosures, and public-private partnerships, such as voucher programs and contracting out. These programs, if implemented well, can be highly effective. In an educational scheme for marginal communities in rural Pakistan, the government paid the private provider a per-child subsidy, increasing primary school enrollments and boosting test scores by 30 percentage points.[xi] These programs can also be compatible with the interests of even clientelist politicians, as they are likely to be supported by important stakeholders like the business community and private service providers.

Nonstate provision theoretically relies on the power of the market to solve accountability failures in ways that public provision cannot. But in practice, parents may lack the choice of alternative providers or the information on provider quality to "vote with their feet" and hold nonstate providers accountable. The impact of low-cost private schools on student learning is generally positive, but in some cases it may can be even worse than their public counterparts.[xii] Performance agreements between governments and nonstate providers require some contracting and monitoring capacity in government, and the collection and verification of data to hold nonstate providers accountable.

Digital technologies can improve the impact of these schemes through better data collection, monitoring, and dissemination of information on provider quality. Parents can make more informed decisions, fixing the market failures in private provision. Non-digital school report cards in Pakistan's rural Punjab, for example, improved parental information, lowered private school prices, and boosted school quality.[xiii] Digital technologies can make these choices easier through simpler versions of the school and health care provider rating systems that are now commonplace in the high-income countries. And governments, in the absence of parental choice, can better hold the private providers to account.

Improve electoral accountability

Digital technologies are improving both the security of elections and providing citizens with meaningful and actionable information on government performance. Although the number of electoral democracies in poor countries has increased over the past two decades, the integrity of elections in these new democracies is low. Over half of the elections over the past decade had irregularities either in the run-up to the election or on election day.[xiv] Elections are well-suited for digitally enabled monitoring. As high-profile events that attract significant international attention and scrutiny, improving electoral integrity may be possible even in politically difficult emerging country contexts.

Digital technologies can reduce election violence, as in Kenya and Mozambique, and uncover fraud in vote-counting, as in Afghanistan. Digital identification is being increasingly used to register voters. In Pakistan for example, ahead of the 2013 parliamentary elections, the digital identity database was used to clean the electoral rolls, leading to the removal of 37 million voters with either no, invalid, or duplicate identities, and the addition of 36 million new voters, mostly young and poor, who had valid identification.[xv] Similarly, in the 2015 presidential election in Nigeria biometric identification was used for the first time to enroll 68 million voters and to eliminate 4 million duplicate identities (see spotlight a). Despite these successes though, biometric identification is not without its risks in emerging countries. Simpler, lower-cost monitoring technologies like cellphones that require fewer institutional complements may be preferable.[xvi]

Digital technologies can also improve electoral accountability by exposing corruption and abuse of office, thereby better enabling voters to sanction

(2) Where it is intended to slaughter a cow for the reasons specified in clause (*a*) or clause (*b*) of sub-section (1) it shall be incumbent for a person doing so to obtain a prior permission in writing of the Veterinary Officer of the area or such other Officer of the Animal Husbandry Department as may be prescribed."

23. The expression "slaughter" is defined in Section 2(*e*) of the Act, which is as follows:

"2. (*e*) 'slaughter' means killing by any method whatsoever and includes maiming and inflicting of physical injury which in the ordinary course will cause death;"

24. If we read Section 3 and Section 4 together, it is clear that the person contravening Section 3 cannot put up a defence that the act of slaughter was being done in a place, of which he is not the owner or in respect of which he does not have the conscious possession. Slaughter of cows, subject to exceptions under Section 4, *in any place*, is prohibited under Section 3 and penalty for doing so is provided under Section 8.

25. The High Court's finding that the guilt of the accused persons has not been proved in the absence of proof of their ownership or conscious possession of the house where slaughter took place, is a finding which is debors the said Act and is clearly not legally sustainable. Slaughter of the cows is clearly prohibited under Section 3, subject to the exceptions in Section 4. The case of the accused persons is not covered under the exceptions in Section 4. No such defence was ever taken.

26. Therefore the impugned order of the High Court is, with respect, legally not sustainable. We, therefore are unable to accept the reasons of the High Court. The appeal is allowed. The order of the High Court is set aside and that of the learned Sessions Judge is affirmed.

(2011) 14 Supreme Court Cases 331

(Record of Proceedings)

(BEFORE DR DALVEER BHANDARI AND DEEPAK VERMA, JJ.)

PEOPLE'S UNION FOR CIVIL LIBERTIES
(PDS MATTERS) ... Petitioner;

Versus

UNION OF INDIA AND OTHERS ... Respondents.

Writ Petition (C) No. 196 of 2001 with IAs Nos. 90, 93, 98, 102-08, 110-12 in WP (C) No. 196 of 2001, Contempt Petition (C) No. 99 of 2009 with WP (C) No. 277 of 2010, decided on September 14, 2011

Constitution of India — Arts. 21 and 32 — Public Distribution System (PDS) — Transparency of delivery and management system — Recommendations of High-Powered Committee (HPC) on computerisation of PDS — Time-bound action plan to be prepared by State Governments for complete computerisation of PDS system within three months' time — Central and State Governments directed to file replies — Other directions issued — Significant recommendations of HPC being the following:

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(i) dissemination of information about availability of foodgrains through SMS to be made to pre-identified individuals in local community; (ii) necessity of citizen participation for social audit in ensuring effectiveness of system; (iii) single unified information system be developed to meet abovementioned requirements; (iv) Government of India to ensure necessary infrastructure and financial support; (v) State Governments to link process of computerisation with Aadhar/Unique Identification Number (UID) registration; (vi) an effective grievance redressal mechanism to be strictly enforced based on SMS/email and other suitable technology; (vii) a four digit toll free number to be established for grievance registration and redressal thereof; (viii) digitised database of ration cards be put up in public domain including on websites — Central Government agreeing to all recommendations in principle

J-D/48993/S

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Divya Jyoti and Ms Jyoti Mendiratta, Advocates) for the Petitioner;

Mohan Parasaran, Additional Solicitor General (D.L. Chidananda, S. Wasim A. Qadri, A. Dev Kumar, Ms Sunita Sharma, Ms Sushma Suri, Ms Anil Katiyar, Ms Supriya Jain, D.S. Mahra and Sudarshan Singh Rawat, Advocates) for the Respondents;

H.P. Raval, Additional Solicitor General; Dr Manish Singhvi, Additional Advocate General (Rajasthan), A. Mariarputham, Advocate General, R. Sundaravardhan and Pramod Swaroop, Senior Advocates (Vishnu B. Saharya (for M/s Saharya & Co.), Jana Kalyan Das, Ranjan Mukherjee, S.C. Ghosh, Ms Hemantika Wahi, Ms Suveni Banerjee, D.K. Goswami, Shatish Kr. Mishra, Pragyan P. Sharma, Siddhartha Lodha, (for P.V. Yogeswaran), Ms Indra Sawhney, Devanshu Kr. Devesh, Irshad Ahmad, Milind Kumar, Ms Aruna Mathur, Avnesh Arputham, Yusuf Khan (for M/s Arputham Aruna & Co.), Rikki Sarma, Navnit Kumar (for M/s Corporate Law Group), Ms Rachana Srivastava, Ruchi Daga, Karan Joshi, Manoj Saxena, Mayank Nigam, T.V. George, Ms Kamini Jaiswal, Shish Pal Laler, Ks. Nobin Singh, Sapam Biswajit Meitei, Ranjan Mukherjee, Jatinder Kr. Bhatia, V.G. Pragasam, S.J. Aristotle, Prabu Ramasubramanian, G.V. Rao, Ravi Prakash Mehrotra, Gopal Singh, Manish Kumar, Chandan Kumar, Bikas Kar Gupta, Abhijit Sengupta, Rituraj Biswas, Manish Pitale, Wasi Haider (for C.S. Ashri), Soumitra G. Chaudhuri, Tara Chandra Sharma, Anil Shrivastav, Edward Belho, P. Athainsi R. Naga, K. Enatoli Sema, Nimshim Vashum, T. Harish Kumar, V. Vasudevan, Sanjiv Sen, Prashant Kumar, P.S. Parameswaran, Ujjal Banerjee, A.K. Jha, D.K. Sinha, G.V. Chandrashekhar, N.K. Verma, Ms Anjana Chandrashekar, Gopal Prasad, Sarbajit Dutta, D. Mahesh Babu, Ramesh Allamki, Sanjay Dhande, V. Pattabhi, Sunil Fernandes, Sahaas Joshi, Ms Asha Sharma, Ramesh Babu M.R., Ms Anuradha Rustagi, Ms D. Bharati Reddy, Sanjay R. Hegde, Ramesh Kr. Mishra, Ms Sumita Hazarika, K.K. Mahalik, Ajay Pal, Manjit Singh, Kamal Mohan Gupta, Ms A. Subhashini, Gopal Singh, Kuldip Singh, R.K. Pandey, H.S. Sandhu, K.K. Pandey, Mohit Mudgil, Ravinder Keshavrao Adsure, Ms Bina Madhavan, Vishwajit Singh, Sanjay V. Kharde, Ms Asha G. Nair, K.V. Mohan, Rajesh Srivastava, Ms Pronita S. Thanajayan, Amrvat Sharma, K.N. Madhusoodhanan, R. Sathish, Naushad Ahmad Khan, Rajesh Kr. Verma (for R.C. Kaushik), Pradeep Misra, Venkateswara Rao Anumolu, Vikas Upadhyay, B.S. Banthia, Dr Aman Hingorani, Ms Priya Hingorani, G. Prakash, Ms Beena Prakash, V. Senthil, Naveen Kumar, Anil Kr. Jha, Vikas Mehta, Raj Kr. Gupta, Rajiv Dubey, Kamlendra Mishra, Naresh K. Sharma, Anis Suhrawardy, Shivaji M. Jadhav, Suresh Chandra Tripathy and Navin R. Nath, Advocates) for the DDA.

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ORDER

1. The High-Powered Committee headed by Justice D.P. Wadhwa, Retired Judge of this Court, has submitted a preliminary report on the computerisation of public distribution system. In the recommendations of the report it is mentioned that computerisation of PDS consists of primarily three components i.e. creating an updating beneficiary database, stock management from FCI till FPS and sale of commodities at fair price shops. In order to make PDS effective it is important that the delivery and management system is transparent. The citizen participation for social audit can play a crucial role in ensuring effectiveness of the system.

2. In order to implement this system across the country, the following actions are suggested by the Committee:

1. End-to-end computerisation of PDS may be considered in two parts and following prioritisation of the implementation strategy may be followed:

Component I: Diversions, leakages, delays in allocation and transportation, inappropriate distribution of foodgrains to fair price shops go unchecked because of lack of visibility of this information in the public domain.

Computerisation of complete supply chain management up to the shop level and availability of this information on a transparency portal in public domain is to be accorded the highest priority. The portal should have different dashboards catering to the information needs of all the stakeholders.

Component II: Electronic authentication of delivery and payments at the fair price shop level. In order to ensure that each card-holder is getting his due entitlement, computerisation has to reach literally every doorstep and this could take long. Moreover, several States have already started implementing smart cards, food coupons, etc. which have not been entirely successful. Reengineering these legacy systems and replacing it with the online Aadhaar authentication at the time of foodgrain delivery will take time. This is therefore proposed as Component II.

2. The Department of Food and Public Distribution is directed to immediately issue guidelines to all the States for end-to-end computerisation of TPDS.

3. The Government of India shall ensure that the State Governments prepare a time-bound action plan for completing the process of computerisation. This action plan will be implemented keeping the timelines in mind and will be regularly submitted before the Hon'ble Supreme Court.

4. The States/UTs should take up end-to-end computerisation of TPDS as a top priority and should appoint a dedicated nodal officer to monitor the projects related to TPDS computerisation.

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5. The States/UTs may be encouraged to include the PDS related KYR+ field in the data collection exercise being undertaken by various Registrars across the country as part of the UID (Aadhaar) enrolment.

6. Digitisation of beneficiary data and a centralised database with clear process of data updation to be put in place by the States in a time-bound manner.

7. Dissemination of information about availability of foodgrains through SMS to the pre-identified individuals in the local community to enable social audit. The system could also provide stock position at a specified location on demand. The information related to stock availability using latest technological interface should be made available in a public domain.

8. Single unified information system should be developed to meet the abovementioned requirements that would help to achieve certain basic level of transparency in PDS. For this the States should arrange training programs for field functionaries and FP dealers.

9. Chhattisgarh model of computerisation for PDS system (a note on the computerisation of PDS in the State of Chhattisgarh is annexed hereto as Annexure II) which primarily caters to the computerisation up to the shop level was also deliberated upon and discussed by the HPC. It was decided that the Chhattisgarh model may be adopted for Component 1 and Component 2 may be done on the similar lines of the Gujarat model of computerisation. The Chhattisgarh model may be implemented in all the States within a maximum period of three months. However, some State Governments like the Government of Gujarat which is following Component 2, or other States which may be at the advanced stage of following some other model such States may continue to follow the same so long as it is fulfilling the end objectives of completing the computerisation. (A note on the computerisation of PDS in the State of Gujarat is annexed hereto as Annexure III.)

10. As the process of end-to-end computerisation is expected to be a sizable exercise, to complete it in a mission mode, a separate and dedicated institutional mechanism is to be incorporated to look after the progress of computerisation of PDS. This institution must have active participation of all stake-holders including the State Governments. As PDS is implemented by the State by the State Governments and supported by the Government of India, role of the State Government in this body will be helpful in getting required support from the State Governments.

11. Information related to stock availability, movement and date (*sic* datewise) quantity of stocks supplied to FPS should be made available in public domain by using latest technological interface like SMSs/website or other means.

12. As far as possible, the State Governments should be directed to link the process of computerisation of Component 2 with Aadhar

registration. This will help in streamlining the process of biometric collection as well as authentication. The States/UTs may be encouraged
a to include the PDS related KYR+ field in the data collection exercise being undertaken by various Registrars across the country as part of the UID (Aadhar) enrolment.

13. An effective grievance redressal mechanism should be strictly enforced based on SMS/email and other suitable technology. The Government of India should ensure that this mechanism is put in place in
b all the States. The States/UTs should create effective grievance redressal mechanism where use of mobile based SMS/email can be used for timely resolution of the citizen/beneficiary grievance. A four digit toll free number may be established in all the States for grievances registration and redressal thereof.

14. The Government of India will ensure that the computerisation
c operation is provided necessary infrastructure and financial support. This needs to be completed in a time-bound manner and the institution mechanism so created shall be completely responsible for meeting the timelines. The Government of India with the help of the State Government will ensure that the institution has sufficient infrastructure and finances to complete the computerisation in a time-bound manner.

d *15.* While this complete process is expected to take some time, in the meantime, following action may immediately be taken:

(*a*) The State Governments will ensure doorstep delivery of foodgrain for the ration shops in a time-bound manner and shall ensure that information related to movement and availability of foodgrain is available in public domain.

e (*b*) A PDS public information portal may be made which will have information related to complete public distribution system. In addition to other information, it should also have the information of date and quantity of foodgrain supplied to the fair price shop every month for all the shops.

f (*c*) The digitised database of ration cards will be put up in the public domain including on the websites.

(*d*) The State should make necessary amendments to make the fair price shop financially viable.

(*e*) A four digit toll free number may be established in all the States for grievances registration and redressal thereof.

g (*f*) All the State Governments will ensure that required allocation reaches the fair price shop before the 1st day of the month and this information should be available on the transparency portal.

(*g*) A drive can be started to eliminate the fake and ghost ration cards. A comparison with data available with other departments like election, census, etc. gives the quick estimates about the bogus cards.
h It was seen that at some places, units in the ration cards exceed even the population of the area. These practices should be checked

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immediately. This can also be linked up with the socio-economic census in rural areas which is expected to be completed shortly within this year itself.

(*h*) The Government of India shall ensure that all the State Governments prepare a time-bound action plan for complete computerisation of PDS system within three months' time. Strict deadlines may be fixed in the action plan and these will be submitted before the Hon'ble Supreme Court within three months' period.

(*i*) All above steps may be completed within three months' time.

3. We have discussed the recommendations of the High-Powered Committee on computerisation with the learned counsel for the petitioner and the learned Additional Solicitor General of India. The Government of India has agreed in principle to implement these recommendations as expeditiously as possible. We request Mr Parasaran, learned Additional Solicitor General to ensure that the process of computerisation is completed as expeditiously as possible. He may help in coordinating with the High-Powered Committee and other authorities concerned and individuals.

4. We direct the Chief Secretaries of various States to indicate, within two weeks, as to how much additional foodgrains are required for the poorest districts in their States and allocation of foodgrains would be made within two weeks thereafter. We further direct the Chief Secretaries to ensure that whatever foodgrains are allocated, the same be lifted by them within two weeks thereafter. The allocation of foodgrains to be made out of five million tonnes additionally allocated.

5. We request the High-Powered Committee to hear all the parties and decide whether the foodgrains are required to be distributed at AAY rates or BPL rates and the decision of the High-Powered Committee would be binding on all concerned and would be implemented forthwith.

6. We request the High-Powered Committee to decide this issue as expeditiously as possible and we direct the parties to appear before the High-Powered Committee on 20-9-2011. In case the Chief Secretaries of various States do not respond within two weeks, as directed above, it would be presumed that, that particular State does not require additional foodgrains at AAY or BPL rates.

7. The learned counsel appearing on behalf of the Planning Commission submits that the affidavit to be filed in pursuance of the directions of this Court, has gone to the office of the Prime Minister for vetting and the same would be filed within a week. Reply to that affidavit, if any, be filed within one week thereafter.

8. All those States who have not filed their affidavits may file the same within two weeks from today.

9. List this matter for further directions on 11-10-2011.

Court Masters

True Copy

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ANNEXURE-P/27

MANU/SC/0110/2013

Equivalent Citation: 2013(3) AD (S.C.) 656, AIR2013SC1254, 2013(1)ILJ R.592, JT2013(3)SC454, 2013 (1) KHC 510, 2013(4)KLJ 264, 2013LabIC2637, 2013(2)PLJR100, 2013(2)SCALE263, (2013)2SCC705, (2013)2SCC(L&S)444, (2013)4SCR65, 2013(2)SCT228(SC)

IN THE SUPREME COURT OF INDIA

Civil Appeal No. 956 of 2013 (Arising out of SLP (C) No. 9162 of 2011)

Decided On: 06.02.2013

Appellants: State of Kerala and Ors.

Vs.

Respondent: President, Parent Teacher Assn. SNVUP and Ors.

Hon'ble Judges/Coram:

K. Panicker Radhakrishnan and Dipak Misra, JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Sana Hashmi, Philip Mathew and Liz Mathew, Advs.

For Respondents/Defendant: P.A. Noor Muhamed and Gifera S., Advs.

JUDGMENT

K.S. Panicker Radhakrishnan, J.

1. Leave granted.

2. We are in this appeal concerned with the question whether the High Court was justified in directing the Secretary, General Education Department of the State of Kerala to get the verification of the actual students' strength in all the aided schools in the State with the assistance of the police and to take appropriate action.

3. The Assistant Educational Officer (AEO), Valapad had fixed the staff strength of S.N.V.U.P. School, Thalikulam for the year 2008-09 based on the visit report of High School Association (SS), GHS Kodakara as per Rule 12 of Chapter XXIII of Kerala Education Rules (KER). Later, based on a complaint regarding bogus admissions and irregular fixation of staff for the year 2008-09 by the AEO, the Super Check Cell, Malabar Region, Kozhikode made a surprise visit in the school on 17.09.2008 and physically verified the strength of the students and noticed undue shortage of attendance on that day. The strength verified by the Super Check Cell was not sufficient for allowing the divisions and posts sanctioned by the AEO. The Head Master of the School, however, stated in writing that the shortfall of attendance on the day of inspection was due to "Badar Day" of Muslim community and due to distribution of rice consequent to that. In order to confirm the genuineness of the facts stated by the Head Master, the Cell again visited the school on 16.12.2008. Verification could not be done on that day, hence the Cell again visited the school on 02.02.2009 and physically verified the students' strength. On that day also, there were large number of absentees as noticed on 17.09.2008. On verification of attendance register, it was found that the class teachers of respective classes had given bogus presence to all students on almost all the days. Enquiry revealed that the school authorities had obtained the staff fixation order for the year 2008-09 through bogus recordical admissions.

4. The Director of Public Instructions (DPI), Thiruvananthapuram consequently issued a notice dated 07.05.2009 to the Manager of the School of his proposal to revise roll strength and revision of staff strength by reducing one division each in Std. I, II, IV to VII and 2 divisions in Std. III and consequent posts of 5 LPSAs, 3 UPSAs in the school during the year 2008-09. The Manager of the school responded to the notice vide representation dated 27.05.2009 stating that Super Check Officials did not record the attendance particulars of the students in the visit record and had tampered with the attendance register. The Manager had also pointed out that the Headmaster was not responsible to compensate the loss suffered by the Department by way of paying salary to the teachers who had worked in the sanctioned posts. Further, it was also pointed out that the staff fixation should not be done within the academic year and re-fixation was not permissible as per Rule 12E(3) read with Rule 16 of Chapter XXIII, KER and requested not to reduce the class divisions.

5. The DPI elaborately heard the lawyers appearing for the Headmaster and the Manager of the school, affected teachers as well as the officials of the Super Check Cell. Having heard the submissions made and perusing the records made available, the DPI found that the staff fixation of the school for the year 2008-09 was obtained through bogus admissions and misrepresentation of facts. DPI noticed that the roll strength during the year 2008-09 was 1196. There were 404 absentees on the first visit of the Cell on 17.09.2008. The Super Check Cell again visited the school on 16.12.2008 and 02.02.2009 and it was found that among 404 students absent on the first day, 173 names were bogus and irregular retentions. The physical presence

of 179 students could not be verified on all the three occasions. DPI, therefore, passed an order revising the staff fixation of the school for the year 2008-09 as per Rule 12(3) read with Rule 16 of Chapter XXIII of KER. Consequently, the total number of divisions in the school was reduced to 23 from 31. In the Order dated 08.09.2009, the DPI had stated as follows:

> The Headmaster is responsible for the admission, removals, and maintenance of records and for the supervision of work of subordinates. It is the duty of the verification officer to verify the strength correctly and to unearth the irregularities. Due to the irregular fixation of staff, the State exchequer has incurred additional and unnecessary expenditure by way of pay and allowances for 8 teachers and expenditure incurred in connection with payment of various scholarships, lump-sum grant, noon-feeding, free books etc to the bogus students. These loss sustained to the Government will be recovered from the Headmaster of the school who alone is responsible for all the above irregularities.

6. The DPI also directed to take further action to fix the liabilities and recover the amount from the Headmaster under intimation to DPI and the Super Check Officer, Kozhikode. The Headmaster and Manager of the school, aggrieved by the above-mentioned order, filed a revision petition before the State Government. The High Court vide its judgment dated 7.12.2009 in Writ Petition (C) No. 35135 of 2009 directed the State Government to dispose of the revision petition.

7. The higher level verification was also conducted in the school with regard to the staff fixation for the year 2009-10 and on verification, it was found that many of the students in the school records were only bogus recordical admissions. Following that, the AEO issued staff fixation order for the year 2009-10 vide proceedings dated 27.03.2010.

8. Meanwhile, the President of the Parent Teachers Association (Respondent No. 1 herein) filed WP (C) No. 12285 of 2010 before the High Court seeking a direction to the AEO to reckon the entire students present in the school on the 6th working day and higher level verification of District Education Officer (DEO) on 13.01.2010 for the purpose of staff fixation for the year 2009-10 and also for a declaration that the exclusion of the students who were present on the day of higher level verification on 13.01.2010 from the staff fixation order 2009-10 was illegal and also for other consequential reliefs.

9. Learned Single Judge of the High Court dismissed the Writ Petition on 07.04.2010 stating that the Parent Teachers Association have no locus standi in challenging the staff fixation order. The judgment was challenged in W.A. No. 1195 of 2010 by the President, Parent Teachers Association before the Division Bench of the High Court and the Bench passed an interim order on 14.07.2010. The operative portion of the same reads as follows:

> The inspection team has recorded that as many as 179 students whose names and particulars are furnished, represent bogus admissions for record purposes. If admission register is manipulated by recording bogus admissions in the name of non-existing students or students of other institutions, we fell criminal action also is called for against the school authorities. Since Appellant has denied the findings in the inspection report, we fell a police enquiry is called for the in the matter. We, therefore, direct the Superintendent of Police, Thrissur to constitute a team of Police Officers to go through Ext.P1, verify the registered maintained by the school authorities, take the addresses as shown in the school records and conduct field enquiry as to whether the students are real persons and if so, whether they are really studying in this school or elsewhere. In other words, the result of the enquiry is to confirm to this Court whether the students whose names are in the record of the school are real and if so, whether they are students in this school or any other school.

The Bench also directed to the Superintendent of Police to submit his report within one month.

10. The Superintendent of Police, following the direction given by the High Court, constituted a team under the leadership of the Circle Inspector of Police, Valapad and the team conducted detailed enquiry in respect of all the matters directed to be examined by the police. The Superintendent of Police submitted the report dated 20.09.2010 which reads as follows:

> On the enquiry about the 187 students (179+8) which were alleged as bogus admissions as per Ext.P1, it is revealed that only 72 students were studied in S.N.V.U.P. School during the period 2008-09 and 80 students were studied in some other schools. The addresses of 23 students have not been traced out even with the help of postman of the concerned area. On the enquiry it is also revealed that 4 students vide the admission Nos. 13008, 11875, 12883 and 13876 mentioned in Ext.P1, have not been studied anywhere during that period.
>
> The details of the 187 students, revealed in the enquiry are mentioned below:

1. Actual No. of students studied in SNVUP School, Thalikulam during 2008-2009	
2. No. of Students studied in some other schools	80
3. No. of students whose address have not been trace out	23
4. No. of students have not been studied anywhere	04
5. No. of students removed from the rolls. Immediately after strength inspection	08
Total	187

The report of the enquiry, submitted by the Circle Inspector of Police, Valappad showing the details of each students is also produced herewith.

11. The Division Bench of the High Court after perusing the report submitted by the Superintendent of Police found that neither the finding of the DPI based on inspections by Super Check Cell nor the claim of the Parent Teachers Association was correct since the police had found that at least 72 out of 187 students declared bogus by the DPI were real students of the school. The High Court, therefore, concluded manipulation by the school management was obvious, though not to the extent found by the Super Check Cell based on which DPI had passed the impugned order. The Division Bench expressed anguish that the management had included 80 students studying in other schools as students of the present school. It was also noticed that as many as 23 students could not be traced by the police with the help of the postman, were also included in the register.

12. The Division Bench concluded that since the Super Check Cell, the Education Department lacked the investigating skill or the authority to collect information from the field, it would be appropriate that the verification of actual students in all the aided schools in the State would be done through the police. Holding so, the High Court gave the following direction:

> We, therefore, feel as in this case Police should be entrusted to assist the Education Department by conducting enquiry about the actual and real students studying in every aided school in the State and pass on the same to the Education Department for them to fix or re-fix the staff strength based on the data furnished by the Police. We, therefore, direct the Secretary, Department of Education, to get verification of the actual students studying in all the aided schools in the State done through the police authorities and take appropriate action. It would be open to the Government to consider photo or finger identification of the students for avoiding manipulation in the school registers. The Government is directed to complete the process by the end of this academic year and file a report in this Court.

13. The State of Kerala, aggrieved by the various directions given by the Division Bench, has preferred this appeal. Ms. Liz Mathew, Learned Counsel appearing for the State of Kerala submitted that the High Court was not justified in giving a direction to the Secretary, Education Department in entrusting the task to State Police for verification of actual students' strength in all the aided schools, while the enquiry is being conducted by the Education Department. Learned Counsel submitted that Kerala Education Act and Rules did not prescribe any mechanism for conducting enquiries by the police at the time of staff fixation. The method to be adopted in the fixation of staff in various schools is prescribed under Chapter XXIII of KER and police have no role. The Rules empower the AEO, the DEO and the Super Check Cell etc. to conduct enquiries but not by the police. Learned Counsel also pointed out that the presence of the police personnel in the aided schools in the States would not only cause embarrassment to the students studying in the school but would also cast wrong impression on the minds of the students about the conduct of their Headmaster, teachers and staff of the school.

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14. We notice that the State itself had admitted in the petition that there should be a better mechanism to ascertain the number of students in the aided schools which could be done by finger printing or any other modern system so that the students could be properly identified and staff fixation could be done on the basis of relevant data. We, therefore, directed the State to evolve a better mechanism to overcome situations like the one which has occurred in the school. Fact finding authorities have categorically found that the school authorities had made bogus admissions and made wrong recording of attendance which led to the irregular and illegal fixation of staff strength of the school for the years 2008-09 and 2009-10.

15. An additional affidavit has been filed by the State of Kerala stating that the Government after much thought and deliberations formulated a scientific method to resolve the issue emanating from staff fixation orders every year. The affidavit says that the number of students in the school can be determined through Unique Identification Card (UID) technology and the number of divisions could be arrived at on the basis of revised pupil teacher ratio. Further, it is also pointed out that after implementation of UID as a part of scientific package, the government will remand the matter of identification of bogus admission to the DPI for considering issues afresh after corroborating the findings of Super Check Cell with UID details of the students. The State has issued a circular No. MSP (3) 66183/2011 dated 12.10.2011 which, according to the state, would take care of such situations happening in various aided schools in the State.

16. We are of the view even though the Division Bench was not justified in directing police intervention, the situation that has unfolded in this case is the one that we get in many aided schools in the State. Many of the aided schools in the State, though not all, obtain staff fixation order through bogus admissions and misrepresentation of facts. Due to the irregular fixation of staff, the State exchequer incurs heavy financial burden by way of pay and allowances. The State has also to expend public money in connection with the payment of various scholarships, lump-sum grant, noon-feeding, free books etc. to the bogus students.

17. A great responsibility is, therefore, cast on the General Education Department to curb such menace which not only burdens the State exchequer but also will give a wrong signal to the society at large. The Management and the Headmaster of the school should be a role model to the young students studying in their schools and if themselves indulge in such bogus admissions and record wrong attendance of students for unlawful gain, how they can imbibe the guidelines of honesty, truth and values in life to the students. We are, however, of the view that the investigation by the police with regard to the verification of the school admission, register etc., particularly with regard to the admissions of the students in the aided schools will give a wrong signal even to the students studying in the school and the presence of the police itself is not conducive to the academic atmosphere of the schools. In such circumstances, we are inclined to set aside the directions given by the Division Bench for police intervention for verification of the students' strength in all the aided schools.

18. We are, however, inclined to give a direction to the Education Department, State of Kerala to forthwith give effect to a circular dated 12.10.2011 to issue UID Card to all the school children and follow the guidelines and directions contained in their circular. Needless to say, the Government can always adopt, in future, better scientific methods to curb such types of bogus admissions in various aided schools.

19. We, however, find no reason to interfere with the direction given by the DPI to take further action to fix the liabilities for the irregularity committed in the school for the years 2008-09 and 2009-10, for which the appeal is pending before the State Government. The State Government will consider the appeal and take appropriate decision in accordance with law, if it is still pending. Appeal is allowed as above without any order as to costs.

True Copy

ANNEXURE-R/28

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the Income Tax Act, 1961, on foreign salary payment as a component of the total salary paid to an expatriate working in India. This controversy came to an end vide judgment of this Court in *CIT* v. *Eli Lilly & Co. (India) (P) Ltd.*[1] The question on limitation has become academic in these cases because, even assuming that the Department is right on the issue of limitation still the question would arise whether on such debatable points, the assessee(s) could be declared as assessee(s) in default under Section 192 read with Section 201 of the Income Tax Act, 1961.

4. Further, we are informed that the assessee(s) have paid the differential tax. They have paid the interest and they further undertake not to claim refund for the amounts paid. Before concluding, we may also state that, in *Eli Lilly & Co. (India) (P) Ltd.*[1] vide para 21, this Court has clarified that the law laid down in the said case was only applicable to the provisions of Section 192 of the Income Tax Act, 1961.

5. Leaving the question of law open on limitation, these civil appeals filed by the Department are disposed of with no order as to costs.

(2010) 13 Supreme Court Cases 45

(Record of Proceedings)

(BEFORE DALVEER BHANDARI AND MRS GYAN SUDHA MISRA, JJ.)

PEOPLE'S UNION FOR CIVIL LIBERTIES .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

Writ Petition (C) No. 196 of 2001 with IAs Nos. 27-30, 33, 41-43, 45 (in IA No. 41), 46-47, 51-52, 55-57, 63-74, 76, 78-90, 92-94, 96, 98-99 in WP (C) No. 196 of 2001, Contempt Petition (C) No. 99 of 2009 in WP (C) No. 196 of 2001, decided on May 5, 2010

A. Constitution of India — Arts. 21 and 32 — Shelter, Right to — Right to food, shelter and basic amenities — States of Gujarat, Tamil Nadu, Bihar and West Bengal not focusing on relevant issues or filing unsatisfactory affidavits, directed to file additional proper/satisfactory affidavits
(Paras 15, 16, 43, 44, 54 and 61)

B. Constitution of India — Arts. 21 and 32 — Problem of night shelter not being serious or not existing in States of Arunachal Pradesh, Andaman and Nicobar Islands, Manipur and Tripura, except in cities of Itanagar and Agartala — States of Arunachal Pradesh and Tripura directed to file affidavit regarding their cities Itanagar and Agartala, respectively
(Paras, 13, 14, 41, 42, 64 and 65)

C. Constitution of India — Arts. 21 and 32 — States of Rajasthan, Karnataka, Punjab and Meghalaya proposing to conduct comprehensive survey to identify homeless and/or provide night shelters to them — Progress report regarding provision of shelters directed to be filed within

[1] (2009) 15 SCC 1 : (2009) 312 ITR 225

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stipulated time periods — State of Maharashtra directed to file a comprehensive report regarding problems of urban homeless within two months (Paras 11, 12, 34 to 40 and 66 and 67)

D. Constitution of India — Arts. 21 and 32 — In view of satisfactory affidavits/steps taken/proposed to be taken by States of Mizoram, Uttarakhand, Kerala, Himachal Pradesh, Jharkhand, Sikkim, Puducherry and Chhattisgarh, no further directions given and/or no further affidavits required to be filed (Paras 10, 17 to 21, 24 to 29, 32, 33, 62 and 63)

E. Constitution of India — Arts. 21 and 32 — States of Assam, Nagaland, Uttar Pradesh, NCT of Delhi, Andhra Pradesh and Madhya Pradesh directed to file progress/status report/affidavits within stipulated time in view of proposed undertakings/proposals — Efforts of Delhi Government to minutely and carefully analyse problem of homeless people living in shelters and to provide them with a comprehensive programme for rehabilitation, appreciated — Efforts of State of Andhra Pradesh for filing comprehensive affidavit and demonstrating great sensitivity in dealing with the grave human problem and identifying a large number of areas to solve problems of urban families and others, appreciated — Other States directed to emulate sensitivity shown by State of Andhra Pradesh — Positive attitude of State of Madhya Pradesh, noticed

(Paras 6 to 9, 22, 23, 30, 31, 45 to 51 and 53 to 58)

F. Constitution of India — Arts. 21 and 32 — Six months' extension of term of Central Vigilance Committee appointed on Public Distribution System, directed (Paras 66 to 70)

SS-D/46625/S

ORDER

1. In this writ petition, a report has been filed by the Commissioners in which it has been prayed that there is urgent need of night shelters in urban areas. In the report, it is prayed that the Centre and the State Governments be directed to provide permanent 24 hrs homeless shelters in the areas beginning with 62 cities and towns across India. In the report it is also mentioned that these homeless shelters need to be opened 24 hrs in all seasons, and should have basic amenities to enable a life with dignity.

2. It is further incorporated in the report that winter is a period of severest crisis for homeless people and it is directly life threatening, though all seasons pose threats to homeless people. Homeless people are subject to continuous violence and abuse. Living in the open with no privacy or protection even for women and children, is a gross denial of the right to live with dignity. For this reason the Commissioners are convinced that unless directions are given by this Court, the problems would not be solved.

3. It is further stated in the report that the shelters should have the basic facilities, such as, beds and bedding, toilets, potable drinking water, lockers, first aid, primary health, de-addiction and recreation facilities. It is also mentioned that shelters must be in adequate numbers and in the ratio of at

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least one per lakh of population for every urban centres according to the Delhi Master Plan.

4. The matter was discussed and the learned Additional Solicitor General appearing for the Union of India submitted that all major cities, which have population of more than five lakhs, will be provided with night shelters in the ratio of at least one per lakh of population.

5. This Court issued notice to all the States and the Union Territories. In response to the notice, most of the States and the Union Territories have filed affidavits and their responses are as under.

State of Madhya Pradesh

6. The State of Madhya Pradesh has agreed to construct one night shelter for a population of one lakh in all urban centres. Further it has been directed that:

(*i*) All local bodies within their territorial limits will construct night shelters for homeless people;

(*ii*) Normally at least one night shelter in population of one lakh must be constructed and the homeless persons residing in the night shelters should be provided clean drinking water, light, toilet and provisions for their security;

(*iii*) During winter season proper arrangements may be made for fire with the funds of the local bodies and with the cooperation of the working social organisations blankets be also arranged for the persons staying in night shelters;

(*iv*) In coordination with the local health officer, urban bodies should make arrangements for investigation of health of all those poor persons staying in night shelters and will make arrangements for giving treatment in the government hospitals;

(*v*) As per the requirement of security of the goods of the poor persons residing in the night shelters, locker facility should also be provided;

(*vi*) Separate place be provided for men and women in night shelters.

(*vii*) At the local level all the urban bodies with the cooperation of the working social organisations should also make arrangements for the supply of food on reasonable rates to the poor persons residing in the night shelter;

(*viii*) The above arrangements may be immediately made in the night shelters which have been constructed earlier by the local bodies;

(*ix*) The State Government has directed that within six months, the Commissioners of Municipal Corporations and the Chief Municipal Officer, Municipality should make a survey of the homeless.

7. This affidavit filed by the State of Madhya Pradesh is very positive. We direct the State Government to start constructing night shelters for the homeless in a phased manner according to their affidavit and may submit the report in this Court within two months from today

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State of Nagaland

8. In the affidavit, which has been filed on behalf of the State of Nagaland, it is mentioned that the State Government proposes to conduct a detailed survey through its own department or by engaging reputed organisations/institutions within a period of six months for all urban areas within the State. It is also mentioned that depending upon the results of the detailed survey, shelter homes would be constructed in a phased manner as may be necessary. The shelter homes will have basic requirements necessary for providing safe, secure and comfortable shelter for the homeless.

9. We expect the State of Nagaland to file an affidavit within a period of two months to ensure that entire programme is implemented.

State of Mizoram

10. The State of Mizoram has stated in the affidavit that identification of urban homeless will be conducted in a comprehensive manner within six months and necessary facilities would be provided to the homeless in the shelters. In view of this affidavit, no further directions are warranted at this stage.

State of Rajasthan

11. The learned Additional Advocate General appearing for the State of Rajasthan submits that formulation of the comprehensive policies would take about two months.

12. We direct the Chief Secretary of the State of Rajasthan to file an affidavit within two months indicating the progress made by the State in respect of providing shelters to the homeless in accordance with the standard norms.

State of Arunachal Pradesh

13. An affidavit has been filed by the State of Arunachal Pradesh indicating that the problem does not exist in the State except in Itanagar where the population is more than one lakh. It is mentioned in the affidavit that

> "there is nobody who is homeless or orphan. In the event of death and demise of parents, village community takes over the responsibilities for the children leaving little or no scope for the destitution."

14. It is indeed a very happy situation in the State of Arunachal Pradesh but as regards Itanagar, an affidavit be filed within two months.

State of Gujarat

15. In the affidavit filed by the State of Gujarat, it is mentioned that in the State there are four cities with a population of more than five lakhs i.e. Ahmedabad, Vadodara, Rajkot and Surat. The affidavit is not clear about the issue, which this Court is dealing with.

16. We direct the State of Gujarat to file an additional affidavit indicating within what period the State would be able to provide the shelters for homeless in the urban cities of Gujarat.

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State of Himachal Pradesh

17. In the affidavit filed on behalf of the State of Himachal Pradesh, it is mentioned that only Shimla has a population of more than one lakh in the State. One night shelter, which is already in existence, is being renovated and necessary facilities would be provided in the night shelter.

18. Therefore, in view of this affidavit, at this stage no further directions are warranted so far as this State is concerned.

State of Uttarakhand

19. It is mentioned in the affidavit that Dehradun, Haridwar and Haldwani have a population of more than one lakh. One night shelter is already in existence in Dehradun and two night shelters are there in Haridwar. Haldwani also has one night shelter. The State Government has issued directions to all the urban bodies to provide land free of cost for the establishment of additional night shelters in order to construct shelter for the entire shelterless people.

20. In the affidavit it is also mentioned that the urban local bodies are also directed to submit proposal for the upgradation of existing night shelters basically for enhancing their accommodation capacities and to provide basic amenities, such as, blankets, potable drinking water, toilets, electricity connections, and regular health check-ups.

21. In view of this affidavit, in our considered view, no further directions need to be issued as far as the State of Uttarakhand is concerned at this stage.

State of Assam

22. In an additional affidavit filed on behalf of the State of Assam, it is mentioned that they will undertake the survey and engage reputed organisations/institutions for this purpose and on the basis of the survey, additional shelters would be created or the existing shelters will be upgraded in the phased manner, as may be necessary. The shelters will have the basic requirements necessary for providing safe, secure and comfortable shelter for the homeless.

23. We direct that an affidavit be filed by the State of Assam within a period of two months indicating whether the process has started or not.

State of Kerala

24. In the affidavit filed on behalf of the State of Kerala, it is mentioned that nine shelters for the homeless have been established in the nine districts of Kerala.

25. In view of this affidavit, no further affidavit for the time being is required to be filed by this State.

State of Jharkhand

26. In the affidavit filed by the State of Jharkhand, it is mentioned that the Government of Jharkhand is committed to provide all required amenities, including night shelters for urban shelterless people. It is further mentioned that out of 26 urban local bodies, shelters have been constructed in five cities, namely, Ranchi, Dhanbad, Chulbasa, Deogarh and Jasidih.

27. In view of this affidavit, no further affidavit for the time being is required to be filed by this State.

State of Sikkim

28. It is mentioned that the problem of homeless does not exist in the entire State, but it is also incorporated in the affidavit that in case such need arises, other facilities like mattresses, quilts/blankets, drinking water and toilets, etc. would be provided.

29. In view of this affidavit, no further affidavit is required to be filed by the State of Sikkim.

State of Uttar Pradesh

30. In the affidavit, it is mentioned that there are seven permanent night shelters and one temporary night shelter in the State. It is also mentioned in the affidavit that it proposes to construct permanent shelter homes in six metropolitan cities, such as, Lucknow, Kanpur, Agra, Allahabad, Varanasi and Meerut. The land required for construction of these shelter homes shall be provided free of cost either by the Nagar Nigam or the Development Authority in each of the aforesaid six towns. The construction of such shelter homes shall be monitored at the local level by the Divisional Commissioner concerned. The financial requirement for implementing the aforesaid proposal shall be met by the State Urban Development agency.

31. In principle, the State has agreed to provide night shelters according to the norms only to evaluate the progress made in the matter. We would like the State to file an affidavit within a period of two months.

Union Territory of Puducherry

32. It is mentioned in the affidavit that so far 1102 tenements have been constructed in eight places in Puducherry. In these tenements 1102 homeless families have been provided with permanent shelters. Another 124 homeless families will be rehabilitated in 124 tenements, which are under construction.

33. In view of this affidavit, no further directions are necessary so far as the Union Territory of Puducherry is concerned.

State of Karnataka

34. The State of Karnataka has indicated in the affidavit that the State undertakes to conduct a comprehensive survey to identify the urban homeless within a period of six months. Based on the result of survey, necessary action will be taken to provide basic facilities so that people can enjoy the fundamental right of life with dignity.

35. We direct the State of Karnataka to file an affidavit about the progress of their survey within a period of two months from today.

State of Punjab

36. In the affidavit filed on behalf of the State of Punjab, it is mentioned that as regards the survey for identification of urban homeless, the Department of Urban Local Bodies and the Department of Rural Development and Panchayats have been directed to carry out the survey within two months. The Department of Urban Local Bodies will take action

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to provide night shelters and other services after the identification of homeless persons.

37. The Department of Social Security and Women and Child Development will provide community kitchen at an appropriate scale as per the directions of this Court.

38. The Department of Food, Civil Supplies and Consumer Affairs shall take action to issue AAY ration cards to the homeless population within one month after the completion of the identification subject to direction of this Court. The beneficiaries would be entitled to rations at the scale fixed by the Union Government by AAY families.

State of Meghalaya

39. In the affidavit filed on behalf of the State of Meghalaya, it is mentioned that the State requires time to make survey of the shelterless population, including street children in the cities and two months' time has been prayed for this purpose by the learned counsel.

40. We direct the State of Meghalaya to file an affidavit within a period of two months indicating the progress in the matter.

Union Territory of Andaman and Nicobar Islands

41. The problem of homeless and destitution is not a serious problem in the Islands. Therefore, no directions are necessary to be passed so far as the Union Territory of Andaman and Nicobar Islands is concerned.

State of Manipur

42. Similarly, there is no existence of urban homeless people in this State. Therefore, no directions are necessary to be passed so far as this State is concerned.

State of Tamil Nadu

43. An affidavit, which has been filed by the State of Tamil Nadu, does not focus on the problems of the shelter for homeless people.

44. We direct the State of Tamil Nadu to file an additional affidavit within a period of two months indicating as to what progress has been made in this regard by the State.

National Capital Territory of Delhi

45. Mr. Hansraj, Additional Secretary, Department of Urban Development, Government of National Capital Territory of Delhi, has filed a very comprehensive affidavit. In the affidavit it is mentioned that Government of National Capital Territory of Delhi is in the process of formulating a policy framework and plan for caring and protecting the rights of homeless citizens of Delhi.

46. The Government of NCT of Delhi has established an autonomous body called "Samajik Suvidha Sangam" or "Mission Convergence" — a society registered under the Societies Registration Act to provide an institutional mechanism for unifying social policies impacting the poor and to integrate, establish, manage, operate, maintain and facilitate the integrated

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delivery of welfare entitlements to the underprivileged in an efficient and transparent manner. All the details have been given on behalf of the autonomous organisation. It has also mentioned that St Stephen Hospital is the "Mother NGO" for homeless. This project is being run by the Community Health Department of St Stephen's Hospital. The "Mother NGO" in consultation with various stakeholders has submitted a report titled "Policy Framework and Plan for Caring and Protecting the Rights of Homeless Citizens of Delhi". A comprehensive annexure has also been filed giving details of these plans.

47. It is also mentioned in the affidavit that "Mission Convergence" has initiated a survey of homeless and that the survey is currently in progress and the same is to be completed by 31-5-2010. Since the survey of homeless is a specialised work, interactive meetings are being held with an international group, namely, UNDP, Bangladesh to determine the methodologies of the homeless survey and to finalise the same.

48. In the affidavit, it is mentioned that NGO, Samya had conducted survey and identified 15,000 homeless beneficiaries of which 14,850 which have been approved for giving "homeless cards". These cards are being prepared zonewise and the list is displayed at the office of the Assistant Commissioners/Circle Office for distribution of the special homeless cards to the beneficiaries after obtaining their biometric impressions. The NGO, Samya has also been informed to facilitate delivery of these cards to the beneficiaries and enable them to lift the specified food articles and kerosene oil allocated from the linked fair price shop/kerosene oil depot. The details have been mentioned in the AAY programme.

49. It is mentioned in the affidavit that under the Central Scheme of Food and Supplies Department, Government of NCT of Delhi is carrying out review of BPL/AAY household cards which were issued before 15-1-2009. It is simultaneously carrying out biometric identification of head of family of each household to eliminate fictitious, bogus and ineligible cards and those who have left Delhi.

50. The Government of NCT of Delhi has started "Hunger Free Delhi Campaign — Aap Ki Rasoi" with the active participation of corporate and willing organisation. This programme is to provide food to the destitute people. The affidavit also mentioned about the Mid-Day Meal programme.

51. It is also mentioned in the affidavit that there is Sarva Shiksha Abhiyan for out of school children.

52. Regarding the shelter for homeless, it is mentioned that currently Delhi has 88 night shelters. Most of these shelters are temporary and running in tents. The conditions of shelters need radical improvement. Looking to the population of Delhi, 130 permanent shelters are going to be set up. In addition to these, the Delhi Government proposes to set up 50 temporary shelters during winter months. In total, Delhi will have 186 shelters during winters and 130 shelters all through the year and all kinds of basic facilities

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would be provided in these shelters. They have made provisions for de-addiction centres and recovery shelters also.

53. The Delhi Government has very minutely and carefully analysed the problems of homeless people living in these shelters and is trying to provide a comprehensive programme for the homeless. We must compliment the Government of NCT of Delhi for this effort. We would like the Government of NCT of Delhi to file a further affidavit indicating what progress has been made on different fronts.

State of Bihar

54. We are totally unsatisfied with the affidavit which has been filed by the Chief Secretary of the State of Bihar. The learned counsel appearing for the State prays for and is granted four weeks' time to file a proper affidavit. We would like an additional affidavit to be filed with concurrence of the Chief Minister of the State.

State of Andhra Pradesh

55. An affidavit has also been filed by the State of Andhra Pradesh. The Chief Secretary, in the affidavit, has mentioned that the State of Andhra Pradesh has been one of the first States in the country to start a separate department for sustained effort for eradication of rural poverty called "Society for Elimination of Rural Poverty" which has formulated the Andhra Pradesh Rural Poverty Reduction Project for a focused approach for elimination of rural poverty. It is also mentioned that situation of urban poor living in slums requires special attention. Provision of pucca house for every homeless poor has been a pious purpose of the State Government.

56. Regarding night shelters, it is mentioned that there are 124 municipalities and municipal corporations in the State. Out of these, Hyderabad Urban Agglomeration is metro city with a population of more than 57 lakhs. A special action plan has been formulated for providing shelters to the homeless. Under this, more than one lakh houses are under construction. Apart from this, it has plan to start 60 night shelters at the rate of one for every one lakh population in the city of Hyderabad before 31-12-2010. These shelters would be fully occupied (*sic* equipped) with beds and boarding, drinking water, lockers, first aid, etc.

57. The following measures are taken for effective implementation of this initiative:

(*i*) Survey for identification of the shelterless people in the Greater Hyderabad is programmed to be taken up and completed by 31-5-2010.

(*ii*) Sixty buildings and converting them for use as night shelters to the shelterless people will be done by 30-6-2010. If required, additional floors will be constructed to accommodate all the homeless.

(*iii*) Necessary facilities like arrangement of beds, blankets, clothing, etc. periodical medical health check-up and psychiatric care, provision of physical amenities and cooking facilities to be created in the identified night shelters by 30-6-2010.

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(*iv*) With a view to promote self-sustenance and empowerment of the shelterless people, it is contemplated to provide suitable skill development trainings to them as a result of which they may get expected livelihood opportunities by October 2010.

(*v*) The children of the shelterless, after their admission into the night shelter, will be referred for admission in the nearby schools for imparting elementary education by 30-6-2010.

(*vi*) The inmates of the night shelters, both men and women will be separately accommodated with a provision of privacy and amenities. The food arrangements as per the recommendations of the dietist will be provided for maintaining the nutritional balance of particularly the pregnant women and lactating mothers in the shelters.

(*vii*) Sensitisation through publicity about existence of night shelters in electronic media and print media for information to the homeless people in the city is also taken up on priority.

(*viii*) Corporate institutions and philanthropic agencies to be included in this activity for development of night shelters and services as part of their corporate social responsibility.

(*ix*) Launching of the enforcement drive so as to pick up the shelterless people from the highly concentrated areas i.e. railway terminals, bus terminals, busy commercial centres/markets, traffic junctions, traffic islands, footpaths, public parks, below flyovers, along nalas, freight complexes and workstations, etc. The GHMC staff and reputed NGOs for this purpose will be involved in the process.

(*x*) A periodical vigilance and supervision of the maintenance and function of night shelters is much important with a view to secure the decency, maintenance of discipline. For this purpose an officer will be made incharge with the responsibility to alert the administration for taking the suitable steps for up keeping the shelters.

(*xi*) Round the clock security to be provided along with necessary watch and ward staff.

(*xii*) The role of NGOs is vital with respect to identification, location and maintenance of night shelters. The reputed NGOs of the city which involve in the programmes of social containment will be identified for counselling the shelterless.

58. We would like to compliment the State of Andhra Pradesh for filing comprehensive affidavit and demonstrating great sensitivity in dealing with the grave human problem.

59. The State has identified a large number of areas to solve the problems of urban families and others. The sensitivity which has been shown by the State of Andhra Pradesh requires to be emulated by other States and the Union Territories.

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60. We direct the State of Andhra Pradesh to file an additional affidavit within two months to indicate the progress made in various fronts.

State of West Bengal

61. We have perused the affidavit filed by the Principal Secretary to the Government of West Bengal. The affidavit has covered various aspects but we would like the Principal Secretary to file an additional affidavit dealing with the problems of urban homeless people in the State of West Bengal. Let the same be filed within a period of two months.

State of Chhattisgarh

62. The Joint Director, Urban Administration and Development, Government of Chhattisgarh, has filed an affidavit in which it is mentioned that there are ten cities in the States where the population is more than one lakh and in those cities night shelters have been provided.

63. In view of the above, no further affidavit is required to be filed by the State of Chhattisgarh.

State of Tripura

64. The Additional Resident Commissioner has filed an affidavit. In the affidavit, it is mentioned that only Agartala has more than one lakh of population and after proper survey, night shelters would be provided.

65. Let an affidavit in compliance be filed within a period of two months.

State of Maharashtra

66. We direct the Chief Secretary of the State of Maharashtra to file a comprehensive report regarding problems of the urban homeless in the State of Maharashtra.

67. Let the same be done within a period of two months. Place these matters on 21-7-2010.

IA No. 90

68. Place this application on 10-5-2010.

69. The term of the Central Vigilance Committee appointed on Public Distribution System, which is due to expire on 30-6-2010, is further extended for another period of six months i.e. up to 31-12-2010.

70. Place the matters relating to the Hon'ble Justice D.P. Wadhwa's Committee Report on 22-7-2010.

Court Masters

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framed but not decided — Hence, matter remanded to High Court to decide the same in accordance with law after giving opportunity of hearing to parties (Paras 2 and 3)

Appeal allowed by the Supreme Court held as above. AD-M/46269/SV

ORDER

1. Leave granted. Heard learned counsel for the parties.

2. By the impugned order, the High Court, though framed substantial question of law involved in second appeals but without deciding the same, allowed the appeals and remitted the matter to the first appellate court. In our view, on this ground alone, the impugned order is fit to be set aside.

3. Accordingly, the appeals are allowed, the impugned order rendered by the High Court is set aside and the matter is remanded to it to decide second appeals in accordance with law after giving opportunity of hearing to the parties.

(2013) 14 Supreme Court Cases 368

(Record of Proceedings)

(BEFORE DR DALVEER BHANDARI AND DIPAK MISRA, JJ.)

PEOPLE'S UNION FOR CIVIL LIBERTIES
(PDS MATTERS) .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents

Writ Petition (C) No. 196 of 2001 with IAs Nos. 90, 93, 98, 102-108, 110-112 in WP (C) No. 196 of 2001, Contempt Petition (C) No. 99 of 2009 and WP (C) No. 277 of 2010, decided on March 16, 2012

Constitution of India — Art. 21 — Public distribution system (PDS) — Corruption and pilferage in PDS — Computerisation as a remedy — General consensus noted — Taking note of Affidavit of Secretary, GoI, Department of Food and Public Distribution, special drive made to eliminate bogus/duplicate ration cards — 209.55 lakh ration cards eliminated since 2006 saving subsidy of about Rs 8200 crores annually — Creation and management of digitised beneficiary database including biometric identification supply chain management of TPDS commodities till the fair price shops — Illustration of Gujarat — E advanced stage computerisation and bar coded ration cards reduced 16 lakhs ration cards yielding annual saving of Rs 600 crores — GoI task force under Mr Nandan Nilekani, Chairman, UIDAI, directed to recommend an IT strategy for PDS within four weeks — Copy of order sent to him through special messenger — IAs listed for further directions fixing time frame — Human and Civil Rights — Right to food — Freedom from malnutrition and hunger (Paras 1 to 6)

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People's Union for Civil Liberties v. Union of India, (2012) 12 SCC 357, *referred to*

SB-MUS0756/S

Chronological list of cases cited *on page(s)*

1. (2012) 12 SCC 357, *People's Union for Civil Liberties v. Union of India* 369b-c

ORDER

1. In pursuance of the directions of this Court, Dr B.C. Gupta, Secretary to the Government of India, Department of Food and Public Distribution, New Delhi has filed an affidavit. Copies of the said affidavit have been given to the learned counsel for the petitioner and the counsel appearing for other parties.

2. There seems to be a general consensus that computerisation is going to help the public distribution system in the country in a big way. In the affidavit it is stated that the Department of Food and Public Distribution has been pursuing the States to undertake special drive to eliminate bogus/duplicate ration cards and as a result, 209.55 lakh ration cards have been eliminated since 2006 and the annual saving of foodgrain subsidy has worked out to about Rs 8200 crores per annum. It is further mentioned in the affidavit that end-to-end computerisation of public distribution system comprises creation and management of digitised beneficiary database including biometric identification of the beneficiaries, supply chain management of TPDS commodities till fair price shops.

3. It is further stated in the affidavit that in the State of Gujarat, the process of computerisation is at an advanced stage where issue of bar coded ration cards has led to a reduction of 16 lakh ration cards. It is expected that once the biometric details are collected, this number would increase further. For the present, a reduction of 16 lakh ration cards would translate into an annual saving of over Rs 600 crores. This is just to illustrate that computerisation would go in a big way to help the targeted population of the public distribution system in the country.

4. In the affidavit it is further mentioned that the Government of India has set up a task force under the Chairmanship of Mr Nandan Nilekani, Chairman, UIDAI, to recommend, amongst others, an IT strategy for the public distribution system. We request Mr Nandan Nilekani to suggest us ways and means by which computerisation process of the public distribution system can be expedited. Let a brief report/affidavit be filed by Mr Nandan Nilekani within four weeks from today.

1 *People's Union for Civil Liberties v. Union of India*, (2012) 12 SCC 357

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IA No. 110 of 2010

5. Notice has already been issued in this application. Mr Gonsalves, learned Senior Counsel for the petitioner submits that a copy of this application has not been served upon him. Without getting into the controversy, we request the applicant to serve a copy of this application to the learned counsel for the petitioner within a week. Reply to the application be filed within one week thereafter.

6. List this matter on 9-4-2012 for further directions. IA No. 82 also be listed on that date.

7. A copy of this order be sent to Mr Nilekani through a special messenger.

Court Masters

(2013) 14 Supreme Court Cases 370

(BEFORE P. SATHASIVAM AND RANJAN GOGOI, JJ.)

STATE OF KARNATAKA AND OTHERS .. Appellants;

Versus

VIVEKANANDA M. HALLUR AND OTHERS .. Respondents.

Civil Appeals Nos. 8803-805 of 2012†, decided on December 7, 2012

A. Constitution of India — Arts. 226 and 136 — Condonation of delay — Delay of 449 days in filing writ appeal — Held, after going through the reasons stated therein and in the light of the issues to be considered by the Division Bench as well as the financial implication on the State Exchequer, reasons stated for the delay cannot be rejected as unacceptable — Considering the issues raised and the positive direction given by the Single Judge, Division Bench ought to have condoned the delay and gone into the merits of the matter in the light of the provisions of the Karnataka Stamp Act, 1957 — Delay condoned — Matter remitted to High Court for fresh consideration (Para 8)

B. Constitution of India — Art. 226 — Writ appeal — Issues in question not determined — Matter remanded for decision afresh — Held, without expressing anything on merits of the claim of either party, as Division Bench has not adverted to any substantial grounds urged by the State, particularly with reference to the provisions of Art. 5(c)(i) and Expln. (II) of the Karnataka Stamp Act, 1957, impugned order set aside and case remitted to High Court for fresh consideration — High Court to restore writ appeals and dispose of on merits in accordance with law, affording opportunity to all parties including newly impleaded Respondents 4 to 32 along with connected pending writ petitions, preferably within a period of six months

† Arising out of SLPs (C) Nos. 14177-79 of 2010. From the Judgment and Order dated 19-6-2009 of the High Court of Karnataka at Bangalore in WAs Nos. 1023 and 1324-25 of 2009

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(2010) 5 Supreme Court Cases 318

(Record of Proceedings)

(BEFORE DALVEER BHANDARI AND K.S.P. RADHAKRISHNAN, JJ.)

PEOPLE'S UNION FOR CIVIL LIBERTIES .. Petitioner;

Versus

UNION OF INDIA AND OTHERS .. Respondents.

IA No. 94 with IA No. 195 in WP (C) No. 196 of 2001,
decided on February 10, 2010

Human and Civil Rights — Homeless and destitute persons — Night-shelters — For shelterless persons in Delhi — Pursuant to Supreme Court's directions dt. 20-1-2010, status report submitted by Additional Solicitor General appearing for NCT of Delhi — Affidavit also filed on behalf of DDA stating that they had extended their support in this project and making suggestions in the matter — States also directed to file affidavits — Government undertook to provide guidelines for monitoring night-shelters — Homeless eligible persons to get renewable ration cards but that cannot be used as a document of identification — Households of Delhi to be identified under vulnerable and most vulnerable categories for this purpose — Surveys conducted by NGOs — Government of Delhi initiated community kitchens (Aapki Rasoi) for homeless people at 13 distribution centres — Street children also need shelters and rehabilitation — Constitution of India — Art. 21

People's Union for Civil Liberties v. Union of India, (2010) 5 SCC 423, *referred to*

R-D/46109/C

Advocates who appeared in this case :

Colin Gonsalves, Senior Advocate (Ms Divya Jyoti and Ms Jyoti Mendiratta, Advocates) for the Petitioner;

P.P. Tripathi, Mohan Parasaran and Vivek Tankha, Additional Solicitor Generals, S.K. Dwivedi and Manjit Singh, Additional Advocate Generals, Dr. Manish Singhvi, Pramod Swarup and T.S. Doabia, Senior Advocates [Jaan Kalyan Das, Ms Hemantika Wahi, Somnath Padhan, B.V. Balaram Das, Ms Indra Sawhney, Devanshu Kr. Devesh, Milind Kumar, Raku Sarma (for M/s Corporate Law Group), Ms Rachana Srivastava, T.V. George, Ms Kumuni Jaiswal, Khwairakpam Nobin Singh, Girish Agrawal, Ranjan Mukherjee, V.G. Pragasam, S.J. Aristotle, Prabu Ratna Subramanian, Jatinder Kr. Bhatia, R.K. Gupta, Rajeev Dubey, Ms Vandana Mishra, Anil Kr. Jha, Kamlendra Mishra, Shiv Prakash Mahrotra, Gopal Singh, Manish Kumar, Rituraj Biswas, Tara Chandra Sharma, Ms Neelam Sharma, Kumar Rajesh Singh, Ms Prerna Kumari Singh, B.B. Singh, Anil Srivastav, Gopal Prasad, G.V. Chandrashekhar, N.K. Verma, Ms Anjana Chandrashekhar, Ramesh Babu M.R., Ms D. Bharati Reddy, Sanjay R. Hegde, Ms Sumita Hazarika, Kamal Mohan Gupta, Ashima Mukerji, Ajay Pal (for Kuldip Singh), Ms A. Subhashini, Ravindra Keshavrao Adsure, Prashant Kumar, Vishwajit Singh, Sanjay U. Khurde, Ms Asha G. Nair, D.L. Chidananda, S. Wasim A. Qadri, Ms Sunita Sharma, Ms Sarla Baksh, Ram Bastian, D.S. Mahra, Ms Varuna Bhandari Gugnani, Ms Sushma Suri, Ms Anil Katiyar, K.V. Mohan, Rajesh Srivastava, Anuvrat Sharma, Pragyan P. Sharma, P.V. Yogeshwaran, K.N. Madhusoodanan, R. Sathish, R.C. Kaushik, Pradeep Misra, Venkateswara Rao Anumolu, B.S. Rathia, G. Prakash, D.K. Sinha, Vikas Mehta, Naresh K. Sharma, Anis Suhrawardy, S.M. Jadhav, Balaji Srinivasan, B.D. Vivek, Ms Madhumita Bora, Edward Belho, Snatoli Sema, C.M.K. Keatedy, T. Harish Kumar,

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Prasanth P., V. Vasudevan, Sanjib Sen, Ms Anuja Chopra, P. Parameswaran, V.D. Sahariya (for M/s Sahariya and Co.), Ms Aruna Mathur, Viman Dubey and Amarjeet Singh Girsa, Advocates] for the Respondents

Chronological list of cases cited *on page(s)*

1. (2010) 5 SCC 423, *People's Union for Civil Liberties v. Union of India* 319b-c

ORDER

1. In pursuance of the directions of this Court for providing shelter to shelterless people in Delhi, Mr Mohan Parasaran, learned Additional Solicitor General appearing for NCT of Delhi has submitted a status report. In the status report it is mentioned that pursuant to the directions of this Court passed on 20-1-2010[1], an urgent meeting was called by the Chief Secretary, Government of NCT of Delhi to examine the problem of providing adequate shelter in the light of the prevailing cold weather conditions in the capital. The significant decisions taken in the meeting convened by the Chief Secretary, NCT of Delhi are as follows:

(1) It was decided to double the existing number of accommodations in the night-shelters through the Municipal Corporation of Delhi from the existing 5000 persons to a capacity of 10,000 persons.

(2) In the case of Revenue Department of Delhi Government, the increase was by 500 persons.

2. It is also mentioned in the status report that subsequent to the directions passed by this Court, the Revenue Department of Delhi Government pitched in 7 more night-shelters taking the total number of night-shelters to 24. Prior to that, 17 night-shelters in temporary tents were operational at 17 places in Delhi since December 2009. Those night-shelters are at: Fountain, Mori Gate, Pul Mithai, Jamuna Bazar, Kudsia Ghat, Shahdara, Nizamuddin Jhandewalan, Idgah, Meena Bazar, Jama Masjid, Delhi Gate, Anand Parvat near Rachna Cinema (Ratanpuri Chowk), Rajinder Nagar, Hanuman Garh Chowk (Asaf Ali Road), Kalkaji Flyover, Okhla Flyover, Sarita Vihar.

3. Seven new additional night-shelters pursuant to the direction of this Court were located at: Raghuvir Nagar, Sarai Kale Khan, Azadpur Fruit Mandi, Kamla Market, Mata Sundari Road, Nigambodh Ghat and Shahdara.

4. In the status report, it is also mentioned that identification of sites as well as the determination of capacity in each shelter was done in active consultation with the NGOs, namely, Ashray Adhikar Abhiyan and Indo Global Social Service Society (IGSSS). They were closely associated in the entire process of site selection, capacity determination and day-to-day management of the night-shelters. Necessary facilities were provided in these night-shelters to the homeless. Basic amenities such as blankets, drinking water and mobile toilets were provided.

5. Delhi Jal Board has taken the responsibility of providing potable water, Slum and JJ Department, MCD has taken the responsibility of providing mobile toilets and police has provided the security to the inmates

1 *People's Union for Civil Liberties v. Union of India*, (2010) 5 SCC 423

of these temporary night-shelters. The Directorate of Health Services has taken the responsibility of providing facilities for regular health check-up of the inmates of temporary night-shelters. BSES/NDPL has taken the responsibility of providing electricity connections in the temporary night-shelters. The Government is also giving instructions to all the Revenue Deputy Commissioners concerned to associate themselves for coordinating the entire exercise with various Departments/agencies so as to effectively monitor the functioning of these tents. The Revenue Headquarters bears the expenditure for blankets, electricity connections, etc.

6. In pursuance of the directions of this Court, adequate publicity was made in the electronic media and print media so that the homeless people can get information about the shelter homes.

7. In addition to the Delhi Government, Municipal Corporation of Delhi is providing night-shelters in permanent buildings and the same is managed through its Slum and JJ Department in coordination with the NGOs. Before the directions of this Court, the number of night-shelters in permanent buildings was 27. After the directions of this Court, the capacity has increased by 37 w.e.f. 21-1-2010, taking the total number of night-shelters to 64. This has resulted an increase in the capacity from 4165 persons to 8575 persons.

8. It is also mentioned in the report that the facilities that are being provided in the site of night-shelters include electricity, water arrangements, toilet facilities, sanitation arrangement, bedding arrangement in the form of blankets, mattresses and jute mats have been provided and in respect of new night-shelters, procurement has been made by receipt of 2000 blankets, 2000 mattresses and 1000 jute mats.

9. The status report also indicates that for long-term perspective, the Master Plan of Delhi, 2021 provides for one night-shelter for a population of one lakh. The Delhi Development Authority has undertaken to identify and allot sites free of cost or on concessional rates to the Government of NCT of Delhi in view of this being a humanitarian work.

10. Mr Vishnu B. Saharya, learned counsel for the Delhi Development Authority has filed an affidavit today which is sworn to by Mr Ashok Kumar, Commissioner, Planning, Delhi Development Authority, stating that they have extended their support in this project. The provision of night-shelters is envisaged to cater to the shelterless, which are proposed to be provided near the railway terminals, bus terminals, wholesale/retail markets, freight complexes, etc. as per requirements and should be identified keeping in view the major work centres. It is also mentioned therein that special provisions should be made for the homeless women and children including disabled and orphans and old people. In addition, multi-purpose use of the existing facility buildings may be allowed for night-shelter purpose. Provision should also be made for converting existing buildings, wherever available, with suitable modifications into night-shelters.

11. On the basis of 2001 census of houseless population, at least 25 sites were to be earmarked in Delhi for night-shelters. In order to make provision

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of this facility financially sustainable for the local body, innovative concepts such as integrated complex with commercial space on the ground floor and night-shelter on the first floor should be explored. The guidelines and incentive package should be designed by the local agency concerned in collaboration with the Government of NCT of Delhi with a view to develop self-sustaining night-shelters. The houseless population of the year 2001 was 24,966 persons out of a total population of 138 lakhs. As per development norms of MPD-2021, at least 550 to 600 shelterless can be accommodated on a 1000 sq m plot size on long-term basis. Therefore, on every 5 lakh of total population one plot for night-shelter will be required.

12. In the said affidavit it is also mentioned that the Delhi Development Authority being a statutory planning body for long-term perspective is duty-bound to plan and cater to the public needs for providing night-shelter and identifying available places for providing night-shelter for the benefit of affected people.

13. Notices were issued to all the States for providing similar facilities of one night shelter for a population of one lakh in the metropolitan towns. The State of M.P. has filed its affidavit whereas the State of Tamil Nadu and Manipur undertake to file their affidavits during the course of the day. All other States may file their affidavits within two weeks from today, by serving an advance copy thereof upon the Union of India and the petitioner herein.

14. We appreciate the positive response both from NCT of Delhi and the Delhi Development Authority in solving this human problem.

15. Learned Additional Solicitor General submits that the Government undertakes to provide proper guidelines to monitor these night-shelters and these guidelines would be prepared within a period of four weeks from today. While preparing the said guidelines, the NGOs may also be consulted.

16. Mrs Jayshree Raghuraman, Secretary-cum-Commissioner of the Food, Supplies and Consumer Affairs Department, Government of National Capital Territory of Delhi has filed an affidavit in response to the demand of AAY to the desiring people has not been issued. In this affidavit it is stated that Food and Supplies Department issued an order on 9-11-2009 to the Director of SAMYA with a copy to all Assistant Commissioners and FSOs for compliance. By this order, 14,850 persons out of total number of 15,000 presently identified homeless who are eligible to get the cards, were entitled to 10 litres of kerosene oil and 15 kg of specified food articles at below poverty line (for short "BPL") rates i.e. 10 kg wheat and 5 kg rice or vice-a-versa as per their food habits.

17. The cards are issued temporarily for a period of three months and meant only for the purchase of ration and shall not be used as a document of identification. These cards would be issued to 14,850 eligible persons subject to biometric identification. It is further mentioned in the affidavit that the period of validity of homeless cards identified by NGO, SAMYA has now been extended to six months in place of three months' validity to avoid expenses and inconvenience. The homeless card would be extended automatically after six months by a simple procedure of obtaining the

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biometric identification again of the homeless person at the circle office. No further survey would be required

18. The provisions of the Control Order, 1981 provide for continuous issue/renewal of the card. The Cabinet decision was taken in March 2008, and accordingly the Government of NCT of Delhi launched a new programme facilitating the delivery of welfare entitlements by a single window system under the name of "Samajik Suvidha Sangam" (for short "SSS") or Mission Convergence. The Mission Convergence or SSS is working through Samajik Suvidha Kendras by which the facilities provided by nine Departments of the Government will be delivered through a single window scheme. Fresh applications for BPL and AAY cards will be received, processed and delivered from these kendras.

19. The Deputy Commissioners of the nine districts have been appointed as statutory authorities and have been declared as Additional Commissioners (Food and Supplies) under the Delhi Specified Food Articles (Regulations and Distributions) Order, 1981. Further, financial powers are being given to the Deputy Commissioners of the nine districts to function independently and issue ration cards to all vulnerable and most vulnerable categories. The Mission Convergence database of 3.5 lakh vulnerable households and 2.5 lakh most vulnerable households will be used for issue of fresh BPL/AAY cards as per eligibility norms. In this regard, Mission Convergence/SSS has made work flow chart under which the Samajik Suvidha Kendras will process the application. NGOs will carry out verification.

20. Statutory and administrative powers have been delegated to the Deputy Commissioners of the nine districts, who will carry out checks as deemed necessary and issue ration cards. They will supervise the functioning of the district kendras and then issue necessary orders for providing ration cards in their respective districts.

21. The Samajik Suvidha Sangam had taken a decision to identify all households of Delhi under two categories, one, vulnerable households, and second, most vulnerable households. The SSS has categorised the vulnerable households to include construction labour, rag-pickers, porters and hamaals, casual daily labour, wage labour, street vendor/hawkers, cycle rickshaw drivers, casual domestic workers, workers in small household enterprises and workers in households industries. The most vulnerable households include old people, disabled people, single women, women-headed households, single unprotected children, child-headed households, people with debilitating illness.

22. The SSS has already conducted two surveys in resettlement and rural pockets for identifying vulnerable households and the most vulnerable households. It has covered 5.39 lakh families of which 2.05 lakh households are already covered under the PDS system and are having ration cards. 3.34 lakh households of the surveyed families appear to be without ration cards. The survey of entire Delhi is still on.

23. It is stated that on the instruction of the Government of India the issue of ration to the poor is based on income categories whereas the

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vulnerability criteria of the Government of NCT of Delhi is based on proxy indicators of poverty. The two have still to be reconciled. Meanwhile, the Mission Convergence has initiated a new survey of the homeless with the view to get biometric (*viz* impressions) captured to get a firm list of homeless people.

24. In the affidavit it is also mentioned that the NGO, SAMYA had conducted survey and identified 15,000 homeless beneficiaries of which 14,850 have been approved for giving of "homeless cards". These cards are being prepared zonewise and a list is displayed at the Office of the Assistant Commissioners/circle office for distribution of the special homeless cards to the beneficiaries after obtaining their biometric impressions. The NGO, SAMYA has also been informed to facilitate delivery of these cards to the beneficiaries and enable them to lift the specified food articles (SFA) and kerosene oil allocated from the linked fair price shop (FPS)/kerosene oil depot (KOD).

25. Mr Gonsalves, learned counsel for the petitioner submitted that the State Government has tried to deal with the problems of the poor homeless in right earnest, but the Government ought to have issued AAY cards in which the quantity of food entitlement is larger and is given at a lower rate.

26. Mr Parasaran, learned Additional Solicitor General appearing for the NCT of Delhi will take instructions.

27. The Commissioner, Shri N.C. Saxena and Special Commissioner of the Supreme Court, Shri Harsh Mander has submitted a report. The learned Additional Solicitor General may take instructions and file reply, if any, within two weeks from today.

28. Mr Gonsalves, learned counsel for the petitioner has also brought to our notice that the Government of Delhi has initiated a programme of community kitchens (Aapki Rasoi) which serves a nutritious balanced meal for the homeless people at about 13 distribution centres across the city. According to Mr Consalves, it is a laudable initiative but it caters to the need of only five per cent of the homeless.

29. Mr Parasaran, learned Additional Solicitor General submits that he would take instructions and file an additional affidavit to this effect.

30. Mr Gonsalves, learned counsel for the petitioner also pointed out the problem of street children. According to him, street children suffer from many denials and vulnerabilities. These include, deprivation of responsible adult protection; coercion to work to eat each day; work in unhealthy occupations on streets like rag-picking, begging and sex work; abysmally poor sanitary conditions. They have inadequate nutrition from begging and according to him the number of such children in Delhi alone is over 50,000. He submitted that the Delhi Government has an excellent scheme for providing them shelters and rehabilitation centres but that cover a very small percentage of these children. There is an urgent need for providing residential homes for street children, especially those without any adult protection so that their food, health and education can be taken care of.

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31. Mr Gonsalves has submitted that the Delhi Government has already begun implementing a pilot project. four residential schools in Delhi and this project has been successfully implemented for the last three years. According to him, the requirement is about 300 such residential schools in Delhi. The similar problem exists all over and according to him, there should be one High quality residential school on the lines of Kasturba Gandhi Vidyalayas for every 50,000 of urban population.

32. Mr Parasaran will take instructions and file an affidavit within two weeks from today. Since other States have yet to file affidavits, we also direct them to file affidavits within two weeks regarding the problems of street children in their respective States.

33. Place the matter on 16-3-2010.

Court Masters

(2010) 5 Supreme Court Cases 324

(BEFORE P. SATHASIVAM AND R. M. LODHA, JJ.)

STATE OF JHARKHAND AND OTHERS . . Appellants;

Versus

MISRILALL JAIN AND SONS AND ANOTHER . . Respondents

Civil Appeals Nos. 3226-71 of 2010† with Nos. 3272 of 2010‡, 3274-75 of 2010††, 3273 of 2010‡‡ and 3276-77 of 2010§§,

decided on April 13, 2010

Mines and Minerals — Mining lease — Demand for enhanced surface rent — Validity of Resolution dt. 17-6-2005 issued by State Government — Executive or legislative order — High Court by impugned judgment quashing said resolution examining its validity partly on assumption that it was issued by State Legislature — However, Resolution dt. 17-6-2005 was an executive order — Moreover, aspects germane for consideration of controversy overlooked by the High Court, while certain irrelevant aspects taken into consideration — Hence, matter remitted to High Court for reconsideration — Mines and Minerals (Development and Regulation) Act, 1957 — Ss. 2, 3, 4, 5, 13, 15 and 17 — Mineral Concession Rules, 1960 — Rr. 27(1)(d) and 31 — Jharkhand Minor Mineral Concession Rules, 2004 — R. 29(1)(d) — Administrative Law — Administrative or Executive function — Administrative orders/decisions/Executive instructions/orders — What are (Paras 3, 4, 6 and 16 to 19)

Appeals allowed P-D/45900/C

† Arising out of SLPs (C) Nos. 21489-534 of 2007 from the Judgment and Order dated 7-5-2007 of the High Court of Jharkhand at Ranchi in WPs (C) Nos. 1281 of 2006 with Nos. 596, 1323, 1369, 1398, 2495, 1277, 1253, 398 of 2006, WP (S) No. 2233 of 2005, WPs (C) Nos. 2199, 1750, 1021, 1032, 1439, 1797, 1877, 1884, 1958, 2078, 1581, 1720, 2342, 2358, 2359, 2361, 893, 854, 2052, 2097, 2266, 1498 of 2006, 5831 of 2005, 3168, 2057, 4228, 1297, 1267, 3905, 5014, 4883, 5655, 4169, 2217 of 2006, 362 of 2007 and WP (T) No. 1463 of 2006

‡ Arising out of SLP (C) No. 7199 of 2008

†† Arising out of SLPs (C) Nos. 7200-01 of 2008

‡‡ Arising out of SLP (C) No. 7202 of 2008

§§ Arising out of SLPs (C) Nos. 7203-04 of 2008

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ANNEXURE R/31

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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C)No.607 of 2016

LOKNITI FOUNDATION .....PETITIONER

VERSUS

UNION OF INDIA AND ANR. .....RESPONDENTS

O R D E R

1. The petitioner has approached this Court for a commendable cause. The prayer made in the writ petition is, that there should be a definite mobile phone subscriber verification scheme, to ensure 100% verification of the subscriber. It is the prayer of the petitioner, that the identity of each subscriber, as also, his/her address should be verified, so that no fake or unverified phone subscriber, can misuse a mobile phone. It was the contention of the learned counsel for the petitioner, that the instant prayer is imperative, as mobile phones are, used not only for domestic criminal activity, but also, for known terrorist activity (sometimes with foreign involvement).

Consequent upon notice being issued to the Union of India, a short counter affidavit has been filed on its behalf, wherein, it is averred as under.

"22. That however, the department has launched 'Aadhaar based E-KYC for issuing mobile connections' on 16th August, 2016 wherein the customer as well as Point of Sale (PoS) Agent of the TSP will be authenticated from Unique Identification Authority of India (UIDAI) based on their biometrics and their demographic data received from UIDAI is stored in the database of TSP along with time stamps. Copy of letter No.800-29/2010-VAS dated 16.08.2016 is annexed herewith and marked as Annexure R-1/10.

23. As on 31.01.2017, 111.31 Crores aadhaar card has been issued which represent 87.09% of pupulations. However, still there are substantial number of persons who do not have aadhaar card because they may not be interested in having Aadhaar being 75 years or more of age or not availing any benefit of pension or Direct Benefit Transfer (DBT). Currently Aadhaar card or biometric authentication is not mandatory for obtaining a new telephone connection. As a point of information, it is submitted that those who have Aadhaar card/number normally use the same for obtaining a new telephone connection using E-KYC process as mobile connection can be procured within few minutes in comparison to 1-2 days being taken in normal course.

24. That in this process, there will be almost 'NIL' chances of delivery of SIM to wrong person and the traceability of customer shall greatly improve. Further, since no separate document for Proof of Address or Proof of Identity will be taken in this process, there will be no chances of forgery of documents."

3. The learned Attorney General, in his endeavour to demonstrate the effectiveness of the procedure, which has been put in place, has invited our attention to the application form, which will be required to be filled up, by new mobile subscribers, using e-KYC process. It was the submission of the learned Attorney General, that the procedure now being adopted, will be sufficient to alleviate the fears, projected in the writ petition.

4. Insofar as the existing subscribers are concerned, it was submitted on behalf of the Union of India, that more than 90% of the subscribers are using pre-paid connections. It was pointed out, that each pre-paid connection holder, has to *per force* renew his connection periodically, by making a deposit for further user. It was submitted, that these 90% existing subscribers, can also be verified by putting in place a mechanism, similar to the one adopted for new subscribers. Learned Attorney General states, that an effective programme for the same, would be devised at the earliest, and the process of identity verification will be completed within one year, as far as possible.

5. In view of the factual position brought to our notice during the course of hearing, we are satisfied, that the prayers made in the writ petition have been substantially dealt with, and an effective process has been evolved to ensure identity verification, as well as, the addresses of all mobile phone subscribers for new subscribers. In the near future, and more particularly, within one year from today, a similar verification will be completed, in the case of existing subscribers. While complimenting the petitioner for filing the instant petition, we dispose of the same with the hope and expectation, that the undertaking given to this Court, will be taken seriously, and will be given effect to, as soon as possible.

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6. The instant petition is disposed of, in the above terms.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(N.V.RAMANA)

NEW DELHI;
FEBRUARY 6, 2017.

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ITEM NO.9 COURT NO.1 SECTION PIL(W)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).607/2015

LOKNITI FOUNDATION Petitioner(s)

VERSUS

UNION OF INDIA AND ANR. Respondent(s)

Date : 06/02/2017 This petition was called on for hearing today.

CORAM :
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE N.V. RAMANA

For Petitioner(s) Dr.Ashok Dhamija, Adv.
Dr. Kailash Chand, AOR

For Respondent(s) Mr.Mukul Rohtagi, AG
Mr.A N.S.Nadkarni, ASG
Mr.Vijay Prakash, Adv.
Ms.Sadhna Sandhu; Adv.
Mr.Jai Dehadrai, Adv.
Mr.Santosh Salvadore Rebello, Adv.
Ms.Sneha S.Prabhu Tendulkar, Adv.
Mr.Ajit Yadav, Adv.
Mr.G.S.Makker, Adv.

For TRAI Mr.Sanjay Kapur, Adv.
Mr.Anmol Chandan, Adv.
Ms.Priyanka Das, Adv.
Ms.Shubhra Kapur, Adv.

Upon hearing the counsel the Court made the following
O R D E R

The instant petition is disposed of, in terms of the signed order.

(SATISH KUMAR YADAV)
AR-CUM-PS

(RENUKA SADANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)

True Copy

ANNEXURE-R/32
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PRESS INFORMATION BUREAU
GOVERNMENT OF INDIA
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RELEVANT PORTIONS OF THE SECOND REPORT OF THE SPECIAL INVESTIGATION TEAM (SIT) ON BLACK MONEY RELEASED; ON THE DIRECTIONS OF SIT, CBDT DIRECTS VARIOUS ASSESSING OFFICERS TO FINALIZE THE ASSESSMENTS FOR ALL ACTIONABLE CASES (427), WHOSE NAMES ARE APPEARING IN THE HSBC LIST RECEIVED BY THE DEPARTMENT

New Delhi, December 12, 2014
Agrahayana 21, 1936

Placed below are the relevant portions of the Second Report of the Special Investigation Team (SIT) on Black Money which was recently submitted by the SIT to the Hon'ble Supreme Court:

1. In response to the directions issued by the SIT, CBDT has directed various Assessing Officers to finalize the assessments for all actionable cases (427), whose names are appearing in the HSBC list received by the Department.

As per the information received from France, there are in all 628 persons/entities (except in 2 cases where the same names have appeared twice). Out of these 628 persons/entities, amounts/balances are shown against 339 persons and no amounts/ balances are shown against 289 persons/entities. In respect of the latter category also, further investigations and assessments are being taken to logical end.

Out of the said 628 persons, 201 are either non-residents or non-traceable, leaving 427 persons' cases as actionable cases.

The amount involved in these cases as per details available in the information received, is about **Rs.4,479 crores** approximately ($ converted @ Rs.45). Out of these, **Department has finalized assessment of 79 assessees (involving more than 300 assessments).** An amount of **Rs.2,926 crores** has been brought to tax towards the undisclosed balances in the accounts relating to these persons. For the said amount, these assessees have been levied tax and interest at the appropriate rates. Penalty proceedings under Section 271 (1)(c) of the Income Tax Act, 1961 (I.T. Act) have been initiated in 46 cases. Such penalties have been levied in 3 cases so far. With regard to the other assessees, proceedings are pending.

Further, **prosecutions have been initiated in 6 cases u/s. 276C** (1) of the Income Tax (I.T.) Act for willful attempt to evade taxes and in **5 cases, proceedings have been initiated u/s. 276D of the I.T. Act** on account of willful failure to furnish information in response to the notices issued by the Income Tax Department.

Show Cause Notices for filing prosecution have been issued in 10 more cases and further action would be taken at the earliest.

In other cases, necessary action is being expedited and substantial progress is expected in coming months.

II. Apart from HSBC list, further actions taken by various agencies on the basis of directions given by SIT:-

1. **Directorate of Revenue Intelligence:—**

a) Details have been furnished in respect of 31 cases of iron ore export cases.

In 11 cases, the concerned parties have admitted the undervaluation and before issuance of show cause notices, paid Rs.116.73 crores. Further action would be taken, in accordance with law.

In 10 cases, show cause notices have been issued. Preparation of show cause notice is in progress after completion of investigation in other cases.

b) In respect of other categories of trades, investigation is pending in 33 cases. In some cases, references have been made to Financial Intelligence Unit – India (FIU–IND), ED and CBDT. **According to the agency, the total amount involved could be Rs. 14957.95 crores.**

2. **Directorate of Enforcement:—**

a) From the details furnished by Directorate of Enforcement in relation to mining cases, on the basis of previous illegal mining of iron ore reports relating to Orissa, Goa and Karnataka, action has been taken. In one case of Orissa, accused persons were taken into custody by the Enforcement Directorate and **properties worth more than Rs. 400 crores have already been identified and are under process of attachment.** Regarding other cases, the efforts are on to get the data from the Director of Intelligence Bureau and State Government.

b) **In respect of Karnataka, 3 attachment orders have been passed attaching deposits in bank worth Rs.54.84 crores, properties (Rs.37 crores) and shares (Rs.904.13 crores)** and the orders have been confirmed by the adjudicating authority.

c) Further efforts have been made to ascertain whether any other proceeds of crime exist so that they can be provisionally attached. In respect of Goa and Jharkhand, the preliminary scrutiny and investigation is in progress.

d) It has been pointed out that because of stay order passed by the Hon'ble Kolkata High Court, the Directorate is facing difficulty in taking coercive action in Ponzi/chit fund scheme cases.

e) In respect of certain other cases, prosecution complaints have been filed. **In case of one group case in Jharkhand, provisional attachment orders attaching properties worth Rs. 452.43 crores were passed and adjudicating authority has confirmed attachment of properties worth Rs. 263.73 crores.**

f) 5 Letters Rogatories (LRs) have been issued by the PMLA Court. Replies to 4 LRs are pending while 1 LR has been returned and effort is being made to issue fresh LR.

g) In another mining case in Karnataka, **provisional attachment for Rs.884.13 crores have been issued and confirmed by the adjudicating authority.** Appeals are pending.

h) In respect of another group cases of Andhra Pradesh, **provisional attachment orders for Rs.1093.10 crores have been confirmed by the adjudicating authority**. It is directed that necessary steps be taken immediately for realization of the amounts involved.

In respect of most of the above noted cases, the CBDT has reported about the actions taken by the assessing officers.

SUGGESTIONS AND RECOMMENDATIONS FOR TAKING ACTION TO CONTROL BLACK MONEY

1. Suggestion made by Financial Action Task Force (FATF) on TBML in its report; as quoted above, that Data Analysis & Research for Trade Transparency System adopted by USA requires to be adopted and accepted, as it would control over/under invoicing to some extent. There should be institutional mechanism through a dedicated set up which examines mismatch between export/import data with corresponding import/export data of other countries on at least a quarterly, if not a monthly basis.

2. It is established since years that over invoicing or under invoicing is known method for stashing black money outside the country. Main question is how to control this malady. If there is proper vigilance to a large extent by the Customs Department, mis–invoicing can be controlled because, now–a–days, price of various goods/machineries is known in the international markets. For this, data is also published and is available on computer at any point of time. Hence, it was suggested that in a Bill of Export/shipping Bills, an entry should be included, namely, what is the international market price of the goods/machineries which were sought to be exported. The said suggestion is under consideration and is likely to be implemented within short time.

3. Further, it is of utmost necessity to curb the creation of fake/bogus bills. One important step which can be taken to curb this menace is to make declaring of PAN number mandatory for all sales, where payment is in cash or through bank, above a value of Rs. One lakh. The purchaser would also be under obligation to ensure that the invoices he gets have the PAN number of the seller.

   Further, considering the fact that at present, purchase or sale of goods/services by cash is rampant, which undoubtedly utilizes/generates unaccounted money in the society. For this purpose, a suitable rule is required to be brought under I.T. Rule 114 B made under Section 139 A (5) of the IT Act. By such amendment, purchaser is required to disclose his identity either by PAN number or UID (Aadhar card) or any other centrally recognized documents of identity.

   Transactions relating to purchase and sale of goods, provision of services of any nature where the payment/consideration is Rs. One lakh or above, either by cash or cheque, may be covered under this rule.

4. It is suggested that for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use and including

provisions for confiscation of cash held beyond prescribed limits, provision in the Act should be made. It is to be stated that a number of European countries bar any cash transaction above a particular limit. This can be done in India too. Again, while implementing the suggestions, to ensure that small transactions, which make a bulk of common man's daily transactions, are not affected and for that, a threshold limit could be kept.

Further, for holding of cash/currency notes also, there should be a limit, by prescribing a reasonable threshold, may be Rs.10 lacs or Rs.15 lacs. This would control holding of unaccounted money to a large extent. This would also control transfer of unaccounted cash from one destination to other, which at present is rampant, may be by Angadias or by other means.

5. The aforesaid suggestion is also in conformity with the observations in the case of Rajendran Chingaravelu vs. UoI, in CA No.7814 of 2009; ORDER DATED November 24, 2009 (320 ITR 1)) by the Hon'ble Supreme Court. Therein, it had been observed that "*The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country.*"

This is known to all concerned and, therefore, suggestion made above, be implemented.

6. Financial Action Task Force (FATF) on Money laundering recommends "tax crimes" to be made a predicate offence so that action can be taken under Prevention of Money Laundering Act, 2002. There are more than 25 countries in the world which have made "tax crimes" as a predicate offence. The Government needs to seriously examine the issue and take steps to make "tax crimes" as a predicate offence. To prevent any hardship to salaried or small tax payer, a high threshold of say, more than Rs.50 lakh of tax evasion could be considered as being a predicate offence.

7. Foreign Exchange Management Act, 1999 (FEMA) provides for confiscation of any property held abroad, if found to be held in violation of Section 4 of the Act. For various reasons, it is difficult to proceed against property held abroad. To strengthen the provisions, S. 13 and S. 37 need to be amended to provide for seizure and confiscation of property of equivalent value within the country, if it is held that property held abroad is in violation of Section 4 of FEMA.

8. FIU is uniquely positioned as the national center for receiving, analyzing and disseminating information related to suspected cases of money laundering. Its unique architecture connects it to the entire financial sector on one hand to law enforcement authorities and on the other through an electronic network that makes it possible for information to flow freely in a secure environment. Further, FIU is also connected to the other FIUs of the world through the Egmont Secure Web which makes it possible to access information in foreign jurisdictions. This unique architecture can be harnessed to exchange actionable intelligence on proceeds of crime. Some recommended measures are as follows:-

   a. FIU should be given access to law enforcement information (i.e. information about perpetrators of crime) that can be shared with the reporting entities to locate proceeds of crime laundered in the financial

system. This will be in line with the FATF standards which require that *"FIU should have access to widest possible range of financial, administrative and law enforcement information."*

b. The latest amendments to the PML Rules (2013) have introduced a new report to be furnished to FIU every month i.e. Cross Border Wire Transfer Report in respect of all transactions of more than Rs. Five lakh whose origin or destination is in India. As FIU builds this database over a period of time, the information could be used, in conjunction with information available with other relevant agencies, to analyze suspected cases of cross border illicit financial flows, which have been identified by the OECD and other global bodies as a major area of concern, especially as they relate to significant transfer of funds from developing countries.

c. FIU's international network (Egmont Group) should be fully harnessed to exchange information/intelligence on proceeds of crime transferred abroad. However, for this to be successful, utmost importance should be given to following protocol for international exchange of information so that it is done in a sustainable and credible manner.

d. The law enforcement authorities, through the FIU, invest in improving reporting entities capacity to identify and report suspicious transactions. Substantial proceeds of crime may be laundered in the domestic financial system but the reporting entities may be constrained by lack of access to information on perpetrators of crime. Facilitating access to such information, through FIU, and sharing 'red flag' indicators for suspected proceeds of crime would lead to better quality, actionable intelligence/information from the reporting entities.

e. Post investigation, feedback should be shared jointly with FIU and reporting entities in order to develop better understanding of money laundering trends and typologies, which in turn will improve capacity to identify and report suspicious transactions. There should be a more dynamic interaction among between the stakeholders, i.e., reporting entities, FIU and the law enforcement authorities, which are part of the same value chain.

9. Malady of present enforcement system may be organic problem which leads to increase in corruption and that corruption money is always unaccounted. On occasions, officers fear to take appropriate action for various reasons. These can be controlled only by appropriate directions by the concerned Ministry that in a case where a person is involved in offence relating to taxation or money laundering, evasion of duty and levies, then in such cases, higher officers should not intervene in midst of investigations.

10. It appears that for one or other reasons, Enforcement Directorate attaches the property of a defaulting assessee, then income tax department is not in position to recover the income tax dues, as it is

contended that the property is attached by ED. This appears to be unreasonable. Income tax dues are also amount payable to the Central Government and this problem can be sorted out easily by mentioning in the attachment order passed by the E.D. that it would be open for the Income Tax Department to recover its dues in respect of the attached property. There can not be any conflict of interest between two Departments of Central Government. **For this, even statutory rule can be made, if required.**

11. It appears that, in number of cases, income tax dues or other duty recoveries are stayed without referring to the law laid down by the Hon'ble Court; namely Siliguri Municipality Vs. Amulandu Das, AIR 1984 SC 653, Somaiyas Trading Co. Pvt. Ltd. Vs. S. Samuel AIR 1985 SC 61, Asstt. Collector Vs. Dunlop India Ltd., (1985) 19 ELT 22 and Benara Valves Ltd. Vs. Commissioner Central Excise, (2006) (204 ELT) 513. **It is also noticed that in many cases, even at the show cause notice stage, stay orders are passed staying further proceedings which delay the entire process.** Hence, it is submitted that the aforesaid ratio of the judgments may be reiterated.

12. At present, for entering into financial/business transactions, persons have option to quote their PAN or UID or Passport number or driving license or any other proof of identity. However, there is no mechanism/system at present to connect the data available with each of these independent proofs of ID. It is suggested that these data bases be interconnected. This would assist in identifying multiple transactions by one person with different IDs. A central KYC Registry should be established with all law enforcement agencies, Registrar of Companies and financial institutions having access to its database.

13. As suggested in first report, at least 5 Additional Chief Judicial Magistrates Courts in Mumbai are required to be established for deciding approx. 5000 pending IT prosecution cases. It appears that without direction by the Hon'ble Court, it would be difficult to establish 5 Courts as suggested. For the establishment of 5 courts, Central Government shall bear the entire cost.

Finally, we submit that appropriate directions may be issued to the Central Government for implementation of suggestions/recommendations made above so that substantive result could be achieved in curbing the menace of black money and stashing thereof in foreign tax havens.

MR. JUSTICE M. B. SHAH (RETD.)
CHAIRMAN

DR. JUSTICE ARIJIT PASAYAT (RETD.)
VICE-CHAIRMAN

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ANNEXURE- R/33

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RECOMMENDATIONS OF SIT ON BLACK MONEY AS CONTAINED IN THE THIRD SIT REPORT

New Delhi, July 24, 2015
Shravana 2, 1937

Misuse of exemption on Long Term Capital gains tax for money laundering (Reference p. 82-84 of the Third SIT Report)

This issue was deliberated by SIT during a series of meetings held on 7th January, 14th March, 08th April and [illegible]. In this regard, it is pertinent to mention the observations of the Committee headed by Chairman, CBDT on "Measures to tackle Black Money in Ind[illegible] which submitted its report in 2012 and which read as follows :-

"3.22 Investments are m[illegible] secondary share markets with a view to capturing gains. In this market, [illegible] several scrips are not traded regularly. With the collusion of promoters, some brokers arrange for price(s) with purchase of such scrips at nominal rates and sale at exorbitant prices, with a view to receiving money on sale as capital gain, which the long term gain is subjected to a 'nil' or nominal rate of tax. The advantage for manipulative taxpayer is that he can launder such sale receipts through payment of no tax."

SEBI has recently barred more than 250 entities, including individuals and companies, from the securities market for suspected tax evasion and laundering of black money through stock market platforms. In one such instance price of a scrip rose from Rs. 10.20 to Rs. 489 in 150 trading days – a rise of 4694%.The SIT obtained the background details of these cases and studied them: A typical pattern is observed to be followed in such cases.

- A company with very poor financial fundamentals in terms of past income or turnover is able to raise huge capital by allotment of Preferential allotment of shares is made to various entities.
- There is a sharp rise in price of scrip once the preferential allotment is done. This is normally achieved through circular trading of shares among a select group of companies. These groups of companies often have common promoters/directors.
- The scrips with thus artificially inflated price are offloaded through companies whose funding is provided by the same set of people who want to convert black money into white.

There is an urgent need for having an effective preventive and punitive action in such matters to prevent recurrence of such instances.

We recommend the following measures in this regard:

- SEBI needs to have an effective monitoring mechanism to study such unusual rise of stock prices of Companies while such a rise is taking place. We understand that SEBI has a strong IT infrastructure which can generate red flags for such instances. Such red flags could be built upon trading volumes, entities which contribute to trading volume, financial background of firms through their annual returns and any other indicators SEBI may develop. We believe that with effective and timely monitoring by SEBI a significant number of such instances can be checked in time.
- Once such instances are detected, SEBI should invariably share this information with CBDT and FIU.
- Barring such entities from securities market would not be of strong deterrence in itself. In case it is established, that stock platforms have been misused for taking LTCG benefits, prosecution should invariably be launched under relevant sections of SEBI Act. Section 12A read with section 24 of the Securities and Exchange Board of India Act 1992are predicate offences.
- Enforcement Directorate should be informed to take action under Prevention of Money Laundering Act on the predicate offences.

Misuse of Participatory Notes for Money Laundering (Reference p. 79-81 of Third SIT Report)

The Report of the Committee headed by Dy. CIT, CBDT on "Measures to tackle Black Money in India and Abroad" submitted in 2012 observed asfollows:

"3.43 A Participatory Note is a derivative instrument issued in foreign jurisdictions, by a Foreign Institutional Investor or one of its sub-accounts or one of its associates, against underlying Indian securities. PNs are popular among foreign investors since they allow these investors to reap returns on investment in the Indian market without undergoing the significant cost and time implications of directly investing in the India. These instruments are issued overseas outside the direct purview of Securities &Exchange Board of India (SEBI) surveillance thereby raising many apprehensions about the beneficial ownership and the nature of funds invested in these instruments. Concerns have been raised that some of the money coming into the market via PNs could be the unaccounted wealth camouflaged under the guise of FII investment. SEBI has been taking measures to ensure that PNs are not used as conduits for black money or terrorist funding. As-per SEBI regulations, PNs can be issued to only those entities that are regulated by an appropriate regulator in the countries of their incorporation and are subject to compliance of "Know Your Client" norms. FIIs are also required to declare that these PNs have not been issued to Indian residents or non-resident Indians. Entities issuing PNs are required to submit to SEBI a monthly report which includes details of subscribers and details of securities underlying PNs. Though, the information sought from FIIs issuing PNs are being submitted regularly, the reporting requirements mandated by SEBI presently do not capture details of ultimate beneficial owners of these instruments."

As per SEBI(Foreign Portfolio Investor) Regulations, 2014, Foreign Portfolio Investors (FPIs) can issue ODIs to only those entities that are regulated by an

appropriate foreign regulatory authority subject to compliance with 'Know Your Client' norms. SEBI, vide its circular dated November 24, 2014 has further listed set of criteria for the subscribers of P notes or Offshore Derivative Instruments (ODIs).

SEBI has informed that the outstanding value of Offshore Derivative Instruments (ODIs) at the end of February 2015 stood at Rs. 2.715 lakh crores. SEBI has further informed that the top five locations of end Beneficial owner of ODIs were Cayman Islands, USA, UK, Mauritus and Bermuda contributing to 31.31%, 14.20 %, 13.49 %, 9.91 % and 9.10 % respectively of total ODIs outstanding.

It is clear from above than a major chunk of outstanding ODIs invested in India are from Cayman Islands i.e. 31.31 %. This translates to roughly Rs. 85,006 Crores. The Cayman Islands had a population of 54,397 in 2010 according to Wikipedia. It does not seem conceivable that a jurisdiction with a population of less than 55,000 could invest Rs. 85,000 crores in one country.

The main point of the above elaboration is just that it does not appear possible for the final beneficial owner of ODIs originating from Cayman Islands to be from that jurisdiction.

The following recommendation [illegible] in this regard:

- It is clear that obtaining information on "beneficial ownership" of P notes is of crucial importance even on their face. SEBI needs to examine the issue raised [illegible] jurisdictions where the "final beneficial owner" [illegible]
- The information [illegible] should be in form of individual whose [illegible] SEBI. In no case should the KYC information [illegible] In case a company is the holder of P notes, SEBI should have information of its promoters/directors who exercise effective control over the company. In case of Companies/Trusts represented by service providers like lawyers/accountants, SEBI should have information on the real owners/effective controllers of those Companies/Trusts, not end with name
- P notes are transferable in nature. This makes trading the "true beneficial owner" of P notes even more difficult since layering of transactions can be made so complex so as to make it impossible to track the "true beneficial owner". SEBI needs to examine if this provision of allowing transferring of P notes is in any way beneficial for easing foreign investment. Any investor wanting to invest through P notes can always invest afresh through an Foreign Portfolio Investor (FPI) instead of buying from a P note holder.

Shell Companies and beneficial ownership (Reference p. 73-76 of the Third SIT Report)

The Report of the Committee headed by Chairman, CBDT on "Measures to tackle Black Money in India and Abroad" submitted in 2012 observed asfollows:

"3.4. The primary method of generation of black money remains suppression of receipts and inflation of expenditure. The suppression could be over a range of businesses and industrial activities which are covered by what may be called 'primary' enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc.

3.6. However, as manipulation of income is not always possible by suppression of receipts, tax-payers may try to inflate expenses by obtaining bogus or inflated invoices from 'bill masters', who make 'bogus' vouchers and charge nominal commission. As these persons are of very modest means, upon investigation, they tend to leave the business and migrate from the city where they operate. This is one of the reasons for a proportion of income tax arrears attributed to 'assessee not traceable'.

3.7. Similarly, there are other categories of small 'entry operators', who provide accommodation entries by accepting cash in lieu of cheque/demand draft given as loans/advances/share capital, etc and thereby launder large sums of money at miniscule commissions. Due to frequent migration, such 'entry' operators escape prosecution under the Income Tax [illegible] appellate tax bodies also tend to tax their income at nominal rates [illegible] deterrence; except for taxing commission on such bogus [illegible] taxable hands of beneficiaries. Providing fake bills and entries need to be dealt with strongly as criminal offence under the tax laws."

Use of shell companies to provide accommodation entries to launder black money has been observed in [illegible] investigated or under investigation in the recent [illegible]

The strategy to curb this menace [illegible]

- Proactive detection of creation of shell companies: This would involve intelligence gathering through regular data mining and dissemination of information gathered [illegible] agencies for active surveillance.
- Deterrent penal action against persons involved in creation of shell companies and providing accommodation entries.

The following recommendations are made in this regard:

- Proactive detection of creation of shell companies: Serious Frauds investigation office (SFIO) under Ministry of Company needs to actively and regularly mine the MCA 21 database for certain red flag indicators. These red flag indicators could be based on common DIN numbers in multiple companies, companies with same address, same contact numbers, use of only mobile numbers, sudden and unexpected change in turnover declared in returns etc. These indicators are illustrative in nature and the SFIO office can prepare a set of indicators based on its own experience and consultation with other law enforcement agencies like CBDT, ED and FIU.
- Sharing of information on such high risk companies with law enforcement agencies': Once certain companies are identified through data mining above,

- the list of such high risk companies s hould be shared with CBDT and FIU for closer surveillance.
- In case after investigation/assessment by CBDT, a case of creating accommodation entries is clearly established, the matter should be referred to SFIO to proceed under relevant sections of IPC for fraud. SFIO should also refer the matter to Enforcement Directorate for taking action under PMLA for all such cases of money laundering.
- It has also been observed that in many cases of creation of shell companies the shareholders or directors of such Companies are persons of limited financial means like drivers, cooks or other employees of main persons who intend to launder black money. Section 89(1) and 89(2) of the Companies Act, 2013 provides for persons to declare if they have "beneficial interest" in the shares of the Company or not. Section 89(4) enjoins the Central Government to make rules to provide for the manner of holding and disclosing beneficial interest and beneficial ownership under this section. The Ministry of Company Affairs may frame such rules at the earliest.

Action under PMLA for Trade Based Money laundering:

Section 132 of the Customs Act has been made a predicate offence through the Finance Bill 2015. Section 132 of the Customs Act reads as follows:

"132. False declaration, false document etc.—Whoever makes, signs or uses, or causes to be made, signed or used, any false declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to 1[two years], or with fine, or with both."

Thus any declaration of misrepresented goods is a punishable offence under this Act.

SIT realizes that Trade Based Money Laundering through mispricing of imports/exports is a major means of taking money out of this country. A strong deterrent action is needed to curb this menace. **The SIT thus recommends that all cases of Trade based money laundering detected by DRI where violation of section 132 of Customs Act ,above the threshold provided for in Part B of Schedule of PMLA, has been found must be shared by DRI with the Enforcement Directorate to enable ED to take action under Prevention of Money Laundering Act.**

Use of cash in Black economy (Reference p. 4-6 of Third SIT Report)

Suggestions, made in Paras: 4 & 5 at Chapter: III of the Second Report of SIT, are reproduced as under:—

(i) **"4.** It is suggested that for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use and including provisions for confiscation of cash held beyond prescribed limits, provision in the Act should be made. It is to be stated that a number of European countries bar any cash

transaction above a particular limit. This can be done in India too. Again, while implementing the suggestions, to ensure that small transactions, which make a bulk of common man's daily transactions, are not affected and for that, a threshold limit could be kept.

Further, for holding of cash/currency notes also, there should be a limit, by prescribing a reasonable threshold, may be Rs.10 lacs or Rs.15 lacs. This would control holding of unaccounted money to a large extent. This would also control transfer of unaccounted cash from one destination to other, which at present is rampant, may be by Angadias or by other means.

5. The aforesaid suggestion is also in conformity with the observations in the case of Rajendran Chingaravelu vs. UoI, in CA No.7914 of 2009; ORDER DATED November 24, 2009 (320 ITR 1)) = 2009-TIOL-135-SC-IT by the Hon'ble Supreme Court. Therein, it had been observed that "The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country."

This is known to all concerned [illegible] suggestion made above, be implemented."

(ii) **On the afore-quoted [illegible] response given in the aforesaid Office Memorandum of [illegible]**

"The recommendation has been referred to Department of Economic Affairs (DEA) for taking appropriate action [illegible] feedback to the SIT. It was ascertained from Shri Manoj Joshi, Joint Secretary concerned on 13th April 2015 that the proposal has been sent by DEA to various Departments/Ministries (including MHA) for inputs which are awaited."

(iii) **SIT is awaiting the response of the concerned Departments, as the large cash amount is normally used in illegal transactions such as, those involving, payment for drugs/narcotics deals, corruption/bribery, cricket betting and use of huge cash during elections, etc.**

(iv) According to SIT, if holding of cash is restricted and regulated, to a large extent, it would control circulation of black money within the country and discourage stashing of money abroad.

(v) In the meeting held on 30th April, 2015, the concerned Joint Secretary, Mr. Manoj Joshi remained present and he stated that the aforesaid issue would be decided as early as possible.

Generation of black money in education sector and through donations to religious institutions and charities (Reference p. 84-86 of the Third SIT Report)

SIT sought the response of the Government through the Revenue Secretary on the following points:-

- "It is a known fact that well–known schools and colleges are accepting large donations by cash. That cash normally would be unaccounted money. For controlling such transactions, there should be specific provision that donation shall not be accepted by cash and whosoever accept it, would be punishable under thePrevention of Corruption Act, as if he is "deemed to be a public servant".
- Large amount is donated to various religious institutions or charities. Nobody can object for charity donation but at the same time, that when large amount is donated, it should be only accounted money and that payment should be by account–payee cheque to the charity or the institution. Even if gift of jewelry is made to the charity or institution, it should be by mentioning donor's name and his PAN Number."

CBDT informed on details of searches/surveys conducted by them with respect to above points related to Education sector and Trusts. In short, the substance of the brief findings of searches/surveys conducted by the Department of various entities engaged in area of education through the Trust reveals that large unaccounted amount is accepted as donation and in a number of cases, such donations are used for personal benefits and also for tax evasion which results into generation of black money. The report of the said searches in short is at Annexure: A to this report.

As stated earlier, the person who accepts the donation and the donor requires to be prosecuted under Prevention of Corruption Act. For this, it would require legislative change which is beyond the purview of this report. donation to educational institutions which are in demand of large amount. In some cases, it goes to Rs.1 crore and more. This would go a long way to curb the generation and circulation of black money.

Further, considering the aforesaid report, it appears that in number of cases, assessment is not finalized. Hence, CBDT should take appropriate action for expeditious finalization of the assessment, and if required, punitive action may be taken.

CBDT shall also share the aforesaid report/information with the concerned agencies so that other agencies can also take appropriate action under the relevant law.

Necessity for establishment of additional Courts for deciding the pending cases under the Income Tax Act, 1961 (I.T. Act) (Reference : Page IV of Executive Summary of Third SIT report and extracts from First and Second SIT reports)

(a) In Para: 4 at Chapter: VI of the First Report dated 13th August, 2014, it was *inter–alia* reported that,

"... .. approximately 4,939 cases are pending for disposal before the Metropolitan Magistrate, Mumbai since more than 10 years. If these cases are decided immediately, it would have its own deterrent effect. For this purpose, Additional Chief Judicial Magistrates are required to be appointed, as there is heavy

work load in the Metropolitan Magistrate Courts, Mumbai.

For expediting the cases, if five additional Courts of Additional Chief Judicial Magistrate are constituted which try the aforesaid pending cases under Income Tax Act, 1961, the decision in the said cases would have its own impact. After deciding income tax cases, cases under Customs & Excise Act, 1996 can be dealt with by the said Courts....."

(b) In Para: 13 at Chapter: III of the Second Report (December, 2014), it was reiterated to constitute five additional Courts of Additional Chief Judicial Magistrate. Said Para is reproduced as under—

"*13. As suggested in first report, at least 5 Additional Chief Judicial Magistrates Courts in Mumbai are required to be established for deciding approx. 5000 pending IT prosecution cases.*

It appears that without direction by the Hon'ble Court, it would be difficult to establish 5 Courts as suggested. For the establishment of 5 courts, Central Government shall bear the entire cost.

(c) In view of the recommendations made by the SIT in the First and Second Reports, to constitute five additional Courts of Additional Chief Judicial Magistrate; The Revenue Secretary, [illegible] vide Letter No.K-11022/27/2014-Ad. ED, dated 09th March, 2015 requested the Chief Secretary, Government of Maharashtra to consult the Hon'ble [illegible] setting up of five additional Courts of Additional Chief [illegible]

Thereafter, Chairman, CBDT, vide letter dated 25th March, 2015, requested the Hon'ble Chief Justice of High Court, Bombay to look into the matter and give suitable administrative directions [illegible] setting up of the Courts which can continuously try the prosecution under the Act so that it would have its own deterrent effect.

Action is awaited and it is submitted that if appropriate direction is issued by the Hon'ble Apex Court, the suggestion would be implemented at the earliest.

In addition, in view of the SIT, a suitable direction is required to be issued by the Hon'ble Apex Court to all High Courts and State Governments to allocate suitable number of Judges in the trial Courts trying the Income Tax, Customs, Central Excise, Service Tax, PMLA, FEMA, FERA cases to ensure that these cases are disposed off within one year of filing the charge-sheet. Similar directions may be issued to trial Courts to conclude the proceedings of all foreign asset related prosecutions within one year of their launching. This would have its own deterrent effect

Need for establishment of Central KYC Registry (Reference p. XVI of Executive Summary of the Third SIT Report)

The Second SIT Report in it's third chapter had observed as follows:

"At present for entering into financial/business transactions persons have option to quote their PAN or UID or Passport number or driving license or any other proof of identity. However, there is no mechanism/system at present to connect the data available with each of these independent proofs of ID. It is suggested that these data bases be interconnected. This would assist in identifying multiple transactions by one person with different IDs. A central KYC Registry should be established with all law enforcement agencies, Registrar of Companies and financial institutions having access to its database."

The Department of Revenue has informed that rules for the Central KYC Registry to be framed under Prevention of Money Laundering, (Maintenance of Record) Rules have been finalized by the Department and have been sent to Legislative Department for vetting. The rules are expected to be notified shortly. This is expected to expedite the setting up of this Central KYC Registry which shall be an important office to tackle the menace of black money and money laundering more effectively.

SIT insists that Central KYC Registry (CKYC) should be notified as early as possible.

GENERATION OF BLACK MONEY DUE TO CRICKET BETTING (Reference p.68 -71 of the Third SIT Report)

In the report (February 2010) namely "Study on widening of tax base and tackling black money" of Federation of Indian Chambers of Commerce and Industry (FICCI), generation of black money in various sectors of Indian Economy is discussed in detail. Subsequent to the said Report, information to generation of black money due to "betting" is sourced [illegible]

Betting in sports is illegal in the country and hence, creates a wide scope for black money generation. In India, only betting on horse racing, lotteries conducted by state governments and casinos in certain states are permissible.

According to 2012 FICCI and KPMG report, betting in India is a INR 3,00,000 crore (Rupees Three Lacs Crores) market and if taxed at a rate of 20 percent, the exchequer can earn revenue of INR 12,000 crore to INR 18,000 crore every year.

Cricket betting is widespread in the country. As there are no legitimate means on placing bets, hence, people resort to illegal channels such as bookies/bookmaker that facilitate gambling by setting odds, accepting and placing bets and paying out winnings on behalf of other people. Illegal betting leads to malpractices such as match-fixing or spot-fixing wherein the bookie fixes the outcome of the event in his favor by having an illegal agreement with the sportsperson. This leads to bettors being cheated at the hands of bookmakers, thereby enabling them to earn huge sums of black money.

The Indian Premier League (IPL) has been marred by betting and spot fixing scandals and involvement of huge amount of black money. As per news reports, some of the players are paid more than the payment slabs prescribed by the Board of Control for Cricket in India (BCCI), with certain amount paid through legitimate

means and some in black. During the IPL 2013 season, in a sport fixing scam, several cricketers were arrested for accepting money from bookies to throw away matches.

In the aforesaid context, in the Judgment rendered in the case of **Board of Control for Cricket in India v/s. Cricket Association of Bihar & Ors. [JT 2015 (1) SC 526]**, the Hon'ble Supreme Court observed that,

"Allegations of sporting frauds like match fixing and betting have for the past few years cast a cloud over the working of the Board of Cricket Control in India (BCCI). Cricket being more than just a sport for millions in this part of the world, accusations of malpractices and conflict of interests against those who not only hold positions of influence in the BCCI but also own franchises and teams competing in the IPL format have left many a cricketing enthusiasts and followers of the game worried and deeply suspicious about what goes on in the name of the game. There is no denying the fact that lowers the threshold of tolerance for any wrong doing higher is the expectation of the people, from the system. And cricket being not only a passion but a great unifying force in this country, **a zero tolerance approach towards any wrong doing alone can satisfy the [illegible]ing.**"

Further, the Court referred to "Fundamental betting imperatives" stated in the Anti Corruption Code, which is claimed to have been adopted by BCCI. One of the Imperatives is:—

"1.1.3 Advancing technology and increased betting activity have led to a substantial increase in the amount of money being placed betting on cricket matches. The development of new betting products including spread-betting and betting exchanges, as well as internet and phone accounts that allow people to place a bet at any time and from any place even after a cricket match has started, have all increased the potential for the development of corrupt betting practices..."

Involvement of huge illegal, unaccounted money in cricket betting has been noticed by ED, where betting was being done over internet or using electronic gadgets. It is also stated that some websites (may be outside the country) are providing online betting facilities for various sport events, such as cricket, football, etc.

Considering the aforesaid discussions, it is apparent that illegal activity of cricket betting requires to be controlled by some provisions which are deterrent to all the concerned.

It is true that betting in gambling is a subject on which State Governments have to pass appropriate law, as it is a State subject in the State List (Entry 34). However, considering the fact that large amount of black money is generated and used in this sector, it is suggested that some appropriate legislative directions or rules or regulations are required to be put in place to curb the menace of such betting.

Empowerment of DRI under section 20,21 and 22 of SEZ Act (Reference p. XVI

of Executive Summary of Third SIT Report)

One limitation faced by Directorate of Revenue Intelligence (DRI) in investigating cases of misinvoicing or violations of Customs Act is that presently DRI is **not** empowered under section 20,21 and 22 of the SEZ Act, to carry out investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner. Department of Commerce has so far issued only entry passes for some DRI officers for certain SEZs.

Further, as per the Foreign Trade Policy 2015-2020 announced recently, SEZ has been allowed to avail benefits of Chapter 3 on par with Domestic Tariff Area Units. In effect, SEZ units would avail export incentives available under (i) Merchandise Exports from India scheme (MEIS) or (ii) Service Exports from India Scheme (SEIS). In view of the same, now it has become even more imperative to notify the DRI under the 2nd proviso of section 22 of the SEZ Act to safeguard the interest of Revenue.

SIT has been informed that [illegible] has been taken up with the Ministry of Commerce by Revenue Secretary and DRI [illegible]

In light of above, it is recommended that Ministry of Commerce looks into the matter urgently and issues necessary notification under section 20, 21 and 22 of the SEZ Act empowering DRI to carry out investigation, inspection, search or seizure in the Special Economic Zone or Unit without prior intimation or approval of the Development Commissioner.

MR. JUSTICE M. B. SHAH (RETD.)
CHAIRMAN
DR. JUSTICE ARIJIT PASAYAT (RETD.)
VICE–CHAIRMAN

MAM/KA

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ANNEXURE-R/34

Measures to Tackle Black Money in India and Abroad

Report of the Committee

Headed by
Chairman, CBDT

Parts - I & II

2012

Government of India
Ministry of Finance

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Measures to Tackle Black Money in India and Abroad

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Part-I

INDEX

I. INTRODUCTION

Twin issues of corruption and black money have attracted unprecedented public attention in the past few months in India. Political debates in Parliament and outside, media news and campaigns, public demonstrations, *dharnas* and fasts, Hon'ble Supreme Court's attention and observations, and the general public discourse, has been focused on these issues for more than past two years now. A host of cases relating to corruption have surfaced, such as 2-G spectrum allocation, CWG, Medical Council of India, illegal mining in Jharkhand, Karnataka, Odisha, etc. While in many of these cases, action was taken *suo motu* by the law enforcement agencies, in some cases action came after Hon'ble Supreme Court intervened in Public Interest Litigations (PILs) filed before it. A number of cases relating to money kept abroad also surfaced, such as Hassan Ali Khan and associates, accounts in LGT Bank of Liechtenstein (information received from German tax authorities), and recently accounts in HSBC Bank (information received from the Government of France) which are still under investigation.

1.2 Keeping these developments in view government has taken various steps. The government announced[1] its five-pronged strategy formulated to deal with the problem of black money kept abroad. A study was commissioned[2] by the government, after a gap of 25 years, to estimate the quantum of black money inside and outside the country. The study is being conducted by three top national-level institutions viz. National Institute of Public Finance and Policy (NIPFP), National Institute of Financial Management (NIFM) and National Council of Applied Economic Research (NCAER). Law enforcement agencies have investigated several high-profile corruption cases, putting an unprecedented number of persons charged of offences behind bars. The present Committee was constituted[3] to examine ways to strengthen laws to curb the generation of black money in India, its illegal transfer abroad and its recovery. A Directorate of Income Tax, Criminal Investigation, was notified[4] to deal with criminal matters having financial implications punishable as an offence under any direct tax law. Joint Drafting Committee was formed[5] by the Government, with representatives of agitating civil society members, to draft a Lok Pal Bill. The bill was introduced in Parliament, debated and put to vote in its Special Session[6]. India ratified[7] the United Nations Convention Against Corruption (UNCAC). Decision was taken to triple the manpower of the Directorate of Enforcement, responsible for implementing the anti-money laundering law. These responses demonstrate government's resolve to tackle the twin issues of corruption and black money.

1.3 This multi-agency committee under the Chairman, CBDT as originally constituted, consisted of the following:-

i. Chairman, CBDT – Chairman;
ii. Member (L&C), CBDT – Member;
iii. Director, ED – Member;
iv. Director General, DRI – Member;
v. Director General, Currency – Member;
vi. Joint Secretary (FT&TR), CBDT – Member;
vii. Joint Secretary, Ministry of Law – Member;
viii. Director, FIU-INDIA – Member; and
ix Commissioner (Inv), CBDT – Member Secretary.

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[1] In press conference of Union Finance Minister on 25th January, 2011 at New Delhi
[2] Announced by Union Finance Minister in his Budget Speech on 28th February, 2011.
[3] Ministry of Finance (CBDT) OM vide F.No.291/15/2011-IT (Inv.I) dated 27th May, 2011
[4] Notification S.O.1226(E) dated 30th May, 2011 [No.29/2011 vide F.No.288/179/2009-IT(Inv-II)]
[5] Notified on 9th April, 2011
[6] 27th to 29th December, 2011
[7] India became the 152nd country to ratify the UNCAC on 12th May, 2011

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1.4 The Committee was mandated to examine the existing legal and administrative framework to deal with the menace of generation of black money through illegal means including, inter alia,

a) Declaring wealth generated illegally as national asset;

b) Enacting / amending laws to confiscate and recover such assets; and

c) Providing for exemplary punishment against its perpetrators.

1.5 The Committee was required to consult all stakeholders and submit its report within a period of six months. However, in view of induction of Shri S S Rana, Member (Investigation), CBDT, as Co-Chair of the Committee, and in view of the responses awaited from trade & industry bodies and some departments, tenure of the Committee was extended up to 31st January 2012. Subsequently, Shri K. Madhavan Nair, Member (Inv.), CBDT was appointed as Co-chair, Dr Poonam Kishore Saxena was inducted into the Committee as Member (L&C), and the tenure of the Committee was further extended up to 31st March 2012.

1.6 The Committee held meetings on 9th June 2011, 27th July 2011, 23rd September 2011, 21st December 2011, and 21st & 26th March 2012 to consider various dimensions of the menace of black money, its generation from various sources and transfer abroad. In the **first meeting** held on 9th June 2011, it was decided that each organization represented in the Committee would examine the existing legal and administrative framework, relating to its respective sphere of functioning, to deal with the menace of generation of black money and prepare a status note including suggestions for improvement. It was also decided that a dedicated e-mail id would be created for inviting opinion from all stakeholders on declaring wealth generated illegally as national asset, enacting / amending laws to confiscate and recover such assets and providing for exemplary punishment against its perpetrators. After the first meeting on 9th June 2011, an exclusive email ID **bm-feedback@nic.in** was created to receive feedback from the public and uploaded, along with copy of the OM[1] constituting this Committee, on the web-site of the Income Tax department **http://incometaxindia.gov.in**, and a link provided therein for suggestions. Letters were addressed on 24th June 2011 to major trade & industry associations and other stakeholders for their response / suggestions in the matter by 15th July 2011.

1.7.1 In the **second meeting** of the Committee held on 27th July 2011 the Chairman informed that over 3,500 email **responses** had been received in the past four weeks. He listed out some of the main suggestions received:

a) Electoral reforms, including state funding of elections.

b) Tightening of laws, increasing the severity of punishments, and trial of cases relating to illicit money generated and stashed abroad through fast track courts.

c) Confiscation of undeclared assets or money kept abroad.

d) Monitoring of persons travelling frequently to tax havens and persons indulging in frequent transactions overseas.

1.7.2 The Chair further informed that responses to letters written to trade and industry associations, and others, were still to be received. The DG, DRI and Special Director, ED emphasized the criticality of information sharing among various law enforcement agencies for successful enforcement of the law. The Director, FIU-IND, informed that, under the Financial Intelligence Network (FINnet) being implemented, access to FIU-IND databases would be provided to enforcement agencies through nodes established in their offices. This would enable the member agencies to have speedy and efficient access to the information available with FIU. He also stressed the importance of regular feedback on information disseminated by FIU to improve the quality of suspicious transaction reports and the analysis function of FIU. The DG, Currency pointed out that security of currency is critical to combat the growing menace of counterfeit

[1] Ministry of Finance (CBDT) OM vide F.No.291/15/2011-IT (Inv.I) dated 27th May, 2011

currency. However, he raised the issue of huge economic cost of de-monetizing higher denomination bank notes of ₹ 500 and ₹ 1000 and stated that it was not a feasible idea. The JS (FT&TR), CBDT informed that while the issue of treating tax evasion a criminal offence was still being internationally debated, the flow of information has improved but the information received can be used only for tax purposes. He also informed that further progress had been made in the arena of international cooperation in tax enforcement by way of incorporating provisions in the Tax Information Exchange Agreements (TIEA), whereby enquiries can be made through Indian missions abroad in the presence of officials of that country and counsels of persons investigated. After the second meeting, reminder letters were again sent to the trade / industry associations on 18th August 2011, requesting their inputs / suggestions by 15th September 2011.

1.8 The **third meeting** of the Committee, held on 27th September 2011, discussed at some length various suggestions of the participating organizations and the public. The Chairman observed that existing laws were enough to deal with economic offences but there was a need to strengthen the administrative mechanism to enforce the existing laws. It was observed that existing information exchange mechanism should be improved and additional manpower and financial resources provided to the investigating agencies to tackle the scourge of black money. The Committee noted the anomaly in the existing provisions of the Income Tax Act, 1961 in respect of re-opening of assessments in cases where black money stashed abroad pertained to beyond six years and agreed that an amendment in the Income Tax Act was warranted to rectify this situation. It was also agreed that there was urgent need to better regulate the real estate sector, considered as one of the largest contributors to black money. The Committee was informed that proposals for strengthening PML Act 2002 have already been submitted to the Department of Revenue and were under active consideration of the government. The DG, Currency informed the Committee that maintaining the security of currency is of critical importance and therefore the currency rules have been recently amended to upgrade the existing security features.

1.9 The **fourth meeting** of the Committee, held on 21st December 2011, discussed the basic structure of the Report, viz. define and differentiate 'black money' and 'dirty money' and the sources of its generation. The Chairman emphasized the importance of laying to rest common misconceptions as regards black money through a comprehensive report. He pointed out that black money is first generated within India and then some of it is transferred abroad, and that one of the most important sources of black money within the country is leakages from public expenditure. The Co-Chair informed that feelers were coming from the business community, particularly from the gems & jewellery sector, that the black money holders may be allowed to come forward with disclosure of unaccounted income and assets both in India and abroad, but without any harassment or threat of prosecution and for that purpose the Government should bring out a disclosure scheme exempting prosecution under the Income Tax Act. The Committee noted the views expressed by JS (FT&TR), CBDT that although tax treaties are subject to domestic laws, some countries such as Belgium, Sweden, Norway, etc., allow repatriation of black money, and in this light there is a need to create international consensus regarding recovery of black money, which is otherwise possible only under United Nations Convention Against Corruption (UNCAC) and Mutual Legal Assistance Treaties (MLAT), or through specific recovery provisions in tax treaties. There is no international consensus or law anywhere for declaring tax evasion a criminal offence, but there is a need to distinguish tax evasion from legal and illegal sources. The Committee also noted the issue raised by Member (L&C), CBDT that one of the main contributors to black money in the country is out-dated laws and their lax administration by the state governments, such as stamp duty values being completely out of line with the prevailing market rates, and it was incumbent to suggest action by the state governments to tackle the menace of black money as important stakeholder in controlling it. The Committee further noted the facts pointed out by DG Currency that several steps have been taken to deal with the problem of leakages from the public expenditure, improve the public procurement system and allocation of natural resources following recommendations of the Dhall and Chawla Committees[9]. The Committee also noted with concern the

[9] Constituted vide Order No.483/1/1/2011-Cab. Dated 31.01.2011

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Issue that although FICN forms only a small part of black money as pointed out by DG DRI, more effective measures were required to counter its debilitating consequences. On the suggestion of Director FIU-IND that on account of most of the black money going out of the country through banking channels, there is a need for a central repository of such data, the Committee agreed that the proposal was worth considering. After the fourth meeting, further reminders were sent to Member agencies and trade / industry bodies.

1.10 In response to the reminders, FICCI and ASSOCHAM replied, which are at **ANNEX-A1** and **ANNEX-A2**, respectively. Gist of suggestions from over 4,000 emails received from the public through bm-feedback@nic.in is at **ANNEX-A3**.

1.11 The Committee held its fifth meeting on 21st March, 2012. The Chairman suggested that for deterrent effect, with the aim of fast-tracking through summary trials, the maximum imprisonment of three years prescribed for some of the less serious economic offences may be considered to be reduced to two years by the respective departments. He also suggested that the maximum punishment for more serious offences under the PC Act may be considered to be enhanced from the prescribed seven years to ten years. The suggestions were endorsed by the Committee. It was suggested by the Co-Chair that there should be some limitation of carrying and holding of cash for personal use, for which either the existing laws may be amended or a new law enacted. This was endorsed by the Committee. The draft of the report was decided to be accordingly amended.

1.12 In the sixth and final meeting held on 26th March 2012, suggestion of Member (L&C), CBDT to consider mandating application of Accounting Standards AS-7 and AS-9 to real estate sector was agreed to by the Committee. The suggestion of representative of ED that MCA should consider placing a cap on the number of companies operating from the same premises and number of companies in which a person can become director, and also that there should be better regulation of financial instruments such as PNs, was endorsed by the Committee. The suggestion of Co-Chair to ensure data security was also endorsed. It was also agreed that the Report would be amended accordingly before signing by the Members on 28th March, 2012.

1.13 The Chapters in this report have been arranged to examine (i) the existing popular, academic and international concepts and definitions of black money, to arrive at an agreeable view for the purposes of this report; (ii) the causes for generation of black money, and the sectors of the economy most prone to and / or affected by it; (iii) the extent of black money in India and abroad; (iv) the existing legal provisions and the administrative machinery to tackle black money; and (v) measures to tackle black money.

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II. CONCEPTS AND DEFINITIONS OF BLACK MONEY

2.1 There is no uniform or accepted definition of 'black' money. Several terms are in use – such as 'black money', 'black income', 'dirty money', 'black wealth', 'underground wealth', 'black economy', 'parallel economy', 'shadow economy', 'underground' or 'unofficial' economy. If money breaks laws in its origin, movement or use, and is not reported for tax purposes, then it would fall within the meaning of black money. The broader meaning would encompass and include money derived from corruption and other illegal ways – to include drug trafficking, counterfeiting currency, smuggling, arms trafficking, etc. It would also include all market based legal production of goods and services that are concealed from public authorities for the following reasons –

(i) to evade payment of taxes (income tax, excise duty, sales tax, stamp duty, etc);

(ii) to evade payment of other statutory contributions;

(iii) to evade minimum wages, working hours and safety standards, etc.; and

(iv) to evade complying with laws and administrative procedures.

2.2 There are three sources of black money – crime, corruption and business. The 'criminal' component of black money would normally include proceeds from a range of activities including racketeering, trafficking in counterfeit and contraband goods, forgery, securities fraud, embezzlement, sexual exploitation and prostitution, drug money, bank frauds and illegal trade in arms. The 'corrupt' component of such money would stem from bribery and theft by those holding public office – such as by grant of business, bribes to alter land use or to regularize unauthorized construction, leakages from government social spending programmes, speed money to circumvent or fast-track procedures, black marketing of price controlled services, etc.

2.3 The 'commercial' limb of black money usually results from tax evasion by attempting to hide transactions and any audit trail relating thereto, leading to evasion of one or more taxes. The main reason for such black economy is underreporting revenues / receipts / production, inflating expenses, not correctly reporting workers employed to avoid statutory obligations for their welfare. Opening of the economy permits contracts of all kinds – particularly for allocation of scarce resources such as mineral and spectrum – which, in the absence of transparent rules and procedures for licenses and non compliance of contractual obligations of the persons concerned, leads to increased generation of black money. In all the three forms of black money – 'criminal', 'corrupt' and 'commercial' – subterfuges are created which include false documentation, sham transactions, benami entities, mispricing and collusion. This is often done by layering transactions to hide their origin.

2.4 Studies correlating the extent of corruption with the size of the 'shadow economy' have been few. There is, however, reason to believe that it differs among high and low income countries. In high income countries, the official sector provides good governance and proper enforcement of contracts. In the developing countries, on the other hand, enterprises could engage in entirely unreported activity – restaurants, bars, doctors, lawyers – and even bigger manufacturing entities may indulge in under-reporting. Big companies, though easier to monitor – in order to escape rigours of taxation – may take recourse to inducements. Under such socio-economic conditions, the 'underground' economy and corruption are likely to reinforce each other.

2.5 Level of development affects extent of black economy in another way. Developing countries have large parts of their economy in the informal sector, which is difficult to regulate. Further, cash component of the economy is usually higher and leads to problems of monitoring. Lack of regulation and monitoring reinforces the black economy and also helps its expansion. Opportunities for leakages increase. Low level of literacy reduces penetration of the banking sector resulting in a large cash economy.

2.6 For the purposes of this report, we shall interchangeably use two terms – 'black money' to broadly mean unaccounted or undisclosed income and assets not reported for tax purposes, without reference to its origin (whether legal or illegal), and 'black economy' to denote the sum total of incomes / assets as well as activities that are not accounted for.

2.7 Inflation of expenses takes money out of the system and, therefore, turns 'black'. Wrong claims of deductions or incentives provided in the law reduce the tax liability and thereby keep more funds with the concerned person than with the State. However, money in this case remains within the system and cannot be said to be unaccounted or 'black'. Similarly, shifting of profit for taxation outside the country through transfer pricing by related concerns results in organizing a reverse capital flow from poor to rich countries. This also cannot be said to be 'black' in that money does not go 'underground'. However, these aspects are also discussed in the report as they reduce substantially the availability of resources for economic development of the country.

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III. CAUSES & METHODS ADOPTED FOR GENERATION OF BLACK MONEY, MOST PRONE SECTORS OF ECONOMY[10].

3.1 Generally, rising burden of taxation, both actual and perceived, provides a strong temptation to participate in the black economy. Increasing burden of compliance also gives a strong reason to enter the black economy. Lack of tax morality, or non-compliant attitude of the citizenry towards tax laws, also tends to increase the size of the black economy. Studies indicate that countries with relatively poor regulation of their economies tend to have a higher share of unofficial economy in the GDP, while countries with proper regulations have smaller 'black' economies. Developing countries generally have higher levels of controls, leading to significantly higher effective taxes on official activities, a large discretionary framework of regulations and, consequently, a higher 'black' economy. Developed countries tend to have better enforcement of laws, balanced regulatory burden, better tax to GDP ratio resulting in sizeable revenue mobilization and, therefore, relatively smaller 'black' economies.

3.2 While in developed countries / areas like USA, Canada and Europe black money is generated primarily through illegal activities such as drug trade, illegal migration, etc., in the developing countries in Asia and Africa, generation of black money is from all conceivable sources – corruption and siphoning of public resources, trade-based black money due to non-reporting of incomes or profits and inflation of expenses, and through a host of criminal activities such as illicit manufacturing of counterfeit goods, smuggling, extortion, cheating and financial frauds, illicit narcotics trade, printing and circulation of fake currency, illicit manufacturing / trade in arms, ammunition and explosives, etc.

3.3 Thus, the fight against generation and accumulation of black money is likely to be far more complex requiring stronger intervention of the state in developing countries like India, than in the developed countries. This needs stronger legal framework and commensurate administrative measures, and still stronger resolve to fight the menace.

Suppression of receipts, inflation of expenditure, etc.

3.4 The primary method of generation of black money remains suppression of receipts and inflation of expenditure. The suppression could be over a range of businesses and industrial activities which are covered by what may be called 'primary' enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc. Duties are imposed on manufactured goods through the Central Excise Act by the Central Government. However, the states of the Indian Union have a wide array of powers under List-II of the Constitution. If we take by way of example – two states, namely Uttar Pradesh (U.P.) because of its large population and Madhya Pradesh (M.P.) because of its area, the Government controls economic activity by way of levying taxes, and secondly, by way of controlling certain industrial and commercial activities. U.P. has the Sales Tax Act of 1948 and M.P. has Commercial Tax Act of 1994. U.P. has an Entertainment and Betting Tax Act and Luxury Tax on hotels. Both states have Excise Act by which taxes are levied on liquor manufacture, Stamp Act to deal with collection of stamp duty from registration of instruments for transfer of immovable properties. The primary and fundamental reason for suppression of receipts or values is to lower the incidence of tax. These states also have laws to regulate certain trades – U.P. has Regulation of Cold Storage Act, Regulation of Money Lending Act, Sugar Cane (Regulation) Act and Supply and Purchase Tax Act. The Madhya Pradesh Tendu Patta Adhiniyam, 1964 regulates the trade of Tendu leaves by creation of state monopoly in the trade.

3.5 Therefore, the Income Tax Act becomes a 'secondary' Act. What is hidden from state authorities cannot be shown for the purpose of income tax, as such hidden element is already a part of the 'black' economy. Moreover, if an income tax investigation subsequently reveals infringement of state laws, the courts tend to favour the transgressor, as the evidence of his records have been 'accepted' by state authorities.

[10] Inputs mainly from the Income Tax Department

3.6 However, as manipulation of income is not always possible by suppression of receipts, tax-payers may try to inflate expenses by obtaining bogus or inflated invoices from 'bill masters', who make bogus vouchers and charge nominal commission. As these persons are of very modest means, upon investigation, they tend to leave the business and migrate from the city where they operate. This is one of the reasons for a proportion of income tax arrears attributed to 'assessee not traceable'.

3.7 Similarly, there are other categories of small 'entry operators', who provide accommodation entries by accepting cash in lieu of cheque/ demand draft given as loans / advances / share capital, etc and thereby launder large sums of money at miniscule commissions. Due to frequent migration, such entry operators escape prosecution under the Income Tax Act. The appellate tax bodies also tend to tax their income at nominal rates. There is no effective deterrence, except for taxing commission on such bogus receipts and tax in the hands of beneficiaries. Providing fake bills and entries need to be dealt with strongly and as criminal offence under the tax laws.

Land and real estate transactions

3.8 Land and real estate are possibly the most important class of assets used for investment of 'black' money. As immovable properties are not usually comparable, valuations are different. This imparts flexibility to the valuation process, and makes it an ideal investment for 'black' money. As an asset class both 'black' and 'white' savings are utilized for investment in land and real estate, which provides hedge against inflation apart from a profitable alternative for investment for black savings.

3.9 The availability of urban centres and developed areas critically depends on the policy of the government as change of land use and development of infrastructure is largely in its hands. If resources are concentrated on developing infrastructure in select areas then development accentuates land and property prices in these areas. Master Plan of an urban agglomeration is many a time found to be changed and re-changed again. The more developed parts exert a pull on the less developed parts and infuse a push in prices. Such change is at a 'cost' to the developer paid from the black component of his business.

3.10 Fiscal statutes and incentives both impede and impart momentum to investments in real estate. As a result of rapid urbanization and rising pressure on land in the vicinity of urban areas, real estate prices have increased exponentially. Earlier, Chapter XX-C of the Income Tax Act, 1961 provided for pre-emptive purchase by the Central Government, in cases where agreed consideration of properties was less by 15% or more of the fair market value in designated areas. However, as these provisions were causing procedural delays in registration of transfers, and with a view to remove a source of hardship for the tax-payers, the provisions of Chapter XX-C were made inapplicable in respect of any transfer of immovable property on or after 1st July, 2002. The provisions of Section 50C were brought in by the Finance Act, 2002 w.e.f. 1.4.2003, providing for adoption of stamp duty rates for the purpose of computation of capital gain in the hands of the seller. As levy on land is a State subject, the revision of land rates varies from State to State. Mostly, the stamp duty rates or 'circle rates' are fixed in a general manner, on the basis of zoning of municipal areas — often into 'commercial', 'residential', and 'industrial', etc. These circle rates offer a criterion for differential valuation of different locations but may not reflect actual valuation of individual properties. The present arrangement is therefore not satisfactory and not as effective as Chapter XX-C in curbing both the generation and utilization of black money in the real estate sector.

3.11 With rapid urbanization, large areas of farmlands fall in the urban agglomeration of metros, emerging metros and large cities. Surveillance indicated that cash rich individuals or other entities generating black money through suppression of production profits of pan masala, oil, para-banking, big corporate houses, etc., paid large sums of purchase consideration in cash to farmers. Such acquisition of land by cash payment has the consequence of facilitating routing of black incomes and as farmers move elsewhere, chargeability of capital gains on sellers, i.e. farmers, cannot be effected. Section 194LA of the Income Tax Act, 1961 provides for tax deduction at 10% on the compensation against compulsory acquisition of immovable property. The provision was not made applicable to agricultural land even though such land was falling within 8 kms of a municipality or a cantonment board. Presently, the only way the Income Tax

department monitors such payments is through the Central Information Branch (CIB), where such information is obtained from the Registrar of properties. There is reluctance to comply with the requirement, and it also involves a time lag before the assessing officer is seized of the matter, and because of the time lag verification of on-money payments is not possible. The provision of tax clearance certificate under section 230A of the Income Tax Act was earlier withdrawn in 2001.

3.12 In the real estate sector, despite accounting guidelines[11] for recognizing revenue by percentage completion methods, real estate firms (mostly private companies), resort to their own subjective ways. Some companies show income when a project is say only 30% complete to avail of bank credit, and if there is ample liquidity, not to follow accounting principles by not showing income when a project may be 90% complete. Such accounting variations are larger in this sector of the economy than any other. This is because ICAI Accounting Standards (AS) No.7 (percentage completion method) prescribed for construction contracts leaves out real estate developers. AS No.9, which prescribes standard for revenue recognition, as well as AS-7 are not yet notified under the Income Tax Act. Besides, inflated purchases and wages are shown and project incomes adjusted to under-report profits to the Income Tax department. With labour and materials sourced from the unorganized sector, the scope of inflation of expenses is higher. The actual margin of profit – depending on the land bank holding – may vary substantially from 8% of contractors profits on land acquired just before development to as high as 60% where such land bank has been acquired earlier. The larger projects – civil infrastructure works, like roads, bridges sometimes follow 'inventive accounting' – where revenue items receipt is carried to the balance sheet after 'adjustment'. Such civil works also have scope for manipulation, as the tender amount at a lower figure is side stepped by the successful bidder through cost escalations permitted by conniving staff of the Government agency concerned or through arbitration. Most of the contracts have 'on-money' and 'illegal' components, and their inter-lacing with disclosed component, makes monitoring of the real-estate sector and civil works extremely difficult.

3.13 With continuous rise in prices along with tax benefits on residential properties, high-net worth individuals are motivated to invest in properties, mainly with a view to transferring them and encashing the 'gain' as capital gain, which enjoys special tax treatment and benefits. As a result their investment would not generate desirable activity, as sales on investments of a residential house are tax-free, if re-invested. Such 'flipping' provisions of Section 54 usually help high net-worth individuals. From the angle of welfare of the community, the investment gets channelized to an unproductive activity – speculating in the price of real-estate. Often, the agreement to sell is not executed by the original buyer(s) but by the last buyer, where intermediaries charge hefty premiums.

Corruption

3.14 The cancerous growth of corruption at every stage of interface of the public with officials by way of commissions on mega-projects, kick-backs on mega purchases abroad, leakages in public spending, are all a matter of serious concern.

3.15 In India, it is widely reported that corruption is pervasive and appears impossible to eliminate. At the grass root level, corruption is practiced in millions of exchenges that ordinary people have at lower levels of bureaucracy – for licenses, procuring services, etc. – as part of government's delivery mechanism. Cumulatively a punitive cost is imposed on the poor and lower middle classes. In contrast, instances of large-scale corruption at the national and regional scale, though distant from petty instances of everyday life, have a shock and awe effect and tends to provide a rationalization for lower level corruption. In the Corruption Index for 2010 prepared by Transparency International, India ranked a lowly 87 out of 178 countries (Brazil, China are better placed). In the latest report of 2011, India's rank slipped further to 95 out of 182 countries, whereas Brazil, South Africa and China continue to be ranked higher. Perception of administrative and political corruption in India has risen, with the country having fallen 8 places on

[11] Indian Accounting Standards (AS) 7, 9 and 11 issued by the Institute of Chartered Accountants of India

Transparency International's Corruption Perception Index. **TABLE-C1** indicates the position of BRICS nations (Brazil, Russia, India, China & South Africa) in the Corruption Perception Index in perceived levels of corruption rankings – a very high score indicating very clean systems and very low score indicating highly corrupt countries.

3.16 The 'Ease of Doing Business' index of the World Bank ranks countries on ten parameters, namely, starting a business; dealing with construction permits; getting electricity; registering property; getting credit; protecting investors; paying taxes; trading across borders; enforcing contracts; resolving insolvency. This index averages the country's percentile ranking on ten topics, giving equal weight to each topic – benchmarked to June, 2011. India is a lowly 132 (out of 183 countries) on the Ease of Doing Business Index as against high ranking developed countries like Singapore, UK and USA, or even BRICS nations, as depicted in **TABLE-C2**.

3.17 It is widely believed that the election process requires considerable funds whereas resources declared by major political parties do not appear to be sufficient to meet the actual expenditure and therefore are believed to be funded also through black money. Further electoral reforms are also required to reduce election costs. With increased economic activity, bribes in public private partnership of large projects and large civil works have been detected. Allocation of natural resources is allegedly discretionary and non-transparent. Corruption has also been alleged in defence procurement, foreign consultancy, aircraft purchases, petroleum and gas sectors, purchases abroad, etc. It is reported that despite prohibition on kickbacks in the developed world, ways are found to make such payments through spurious agreements and shady entities, which in turn are alleged to be secreted away in bank accounts in tax havens.

3.18 The thrust of reforms initiated in 1991 was to open the economy. However, free markets need regulatory institutions with best international practices of transparent processes – otherwise, it emasculates democracy. Social sector schemes involving huge public expenditure reportedly suffer from possible manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as it would prevent manipulations like bogus muster rolls. There is a need for effective implementation of KYC norms with adequate safeguards and controls in rural areas without adversely affecting promotion of financial inclusion of the rural population.

3.19 Co-operative banks perform the critical function of providing banking and financial services in rural and far-flung areas where normal banking services are not available. The banking operations of co-operative banks are regulated by the RBI Rural Planning Credit Department and RBI Urban Banks Department. There have been instances when co-operative banks have not been following KYC guidelines. On some occasions, co-operative banks have resisted giving information to the Income Tax Department.

3.20 Corruption of, and in, the private sector is an issue not much in public focus or debate. Corruption flows from private motive or greed, fuelled by discretionary powers vested in an office empowered to distribute resources, goods and services to public. Dishonesty in private sector, for private benefit or profit, is largely responsible for bribery, siphoning of public funds and leakages in public expenditure. It also results in conspicuous consumption, money laundering and sustenance of the black economy. The way to deal with private greed is to design well-laid down rules and regulations, and ensure their proper enforcement and transparency in decision-making without compromising trade interest.

Financial market transactions

3.21 While some sections of the financial markets have become better regulated, many sections remain relatively unregulated. Advances in technology provide possibilities of better reporting systems.

3.22. Investments are made in the secondary share markets with a view to capturing gains. In this market, out of nearly 6,000 listed companies, several scrips are not traded regularly. With the collusion of promoters, some brokers arrange for price(s) with purchase of such scrips at nominal costs, and sales at exorbitant prices, with a view to receiving money on sale as 'capital gain' when the long term gain is subjected to a 'nil' or nominal rate of tax. The advantage for manipulative taxpayer is that he can launder such sale receipts through payment of no tax.

3.23 Often price sensitive information is obtained and the gain is sought to be made on the basis of asymmetrical information, involving 'insider-trading' and also 'fronting', through intermediary companies, which hide the individuals behind the corporate veil. Though SEBI is an effective regulator, instances of 'insider-trading' or 'fronting' are not unknown. Though the stock-exchanges have internal audit, intermediaries are permitted to make genuine corrections in the last fifteen minutes, in respect of transactions entered into by them. However, instances of collusive corrections being made by brokers for obliging clients, using the term 'fat finger' for collusive deals, usually losses have been reported both in the share and derivative segments of the stock market. 'Dabba-trading' or trading outside the recognized stock exchanges, similarly contribute to the parallel economy.

Ion & Jewellery transactions

3.23 When controls were removed, smuggling of gold reduced and legal imports increased. As per the World Gold Council[12] in the twelve month period ended Q-3, 2011, the consumer demand for gold in India stood at 1059 tonnes, valued at US $ 50 billion approx, as against 808.7 tonnes for Greater China, 213.5 for the USA and the world total of 3427.4 tonnes. According to WGC estimates[13], India holds over 18,000 tonnes of above ground gold stocks, worth over US $800 billion (nearly 2/3rd of India's current GDP) and represents 11% of gold stock. The easing of import duty has reduced the intent of illegality but owing to socio-cultural reasons of Indian society, the economic impact of gold remains. As most of the bullion and jewellery is imported, it puts pressure on the balance of payments position, and is also open to misuse by illicit transfers abroad, as gold imports are 11% up in terms of tonnage and 44% in terms of value from January to September, 2011. At $37 billion, so far in the year, it has disproportionately increased the import bill in FY 2011-12 and also adversely impacted the balance of payment. Schemes for importing gold and re-export after value-addition are abused, when gold is diverted to meet domestic demand. Another possible reason is that deposits in banks – either in savings accounts or in fixed deposits or mutual funds do not guarantee a rate of return that would protect the value of investment and have thus made gold a natural choice for investment as it ensures appreciation as well as liquidity. For the country as a whole, high import payments contribute to making the current account deficit larger, creating inflationary pressures and making imports more expensive in rupee terms.

3.24 For the reason that gold has high intrinsic value, it is preferred as an asset class for hiding 'black' incomes even in times of high inflation or uncertainties plaguing the economy, and despite chargeability of jewellery, gold and bullion to wealth tax. The investment in gold is unproductive as, instead of imparting momentum to the economy, citizens in India hold on to such sterile investment for capital appreciation and financial security.

Cash economy and use of counterfeit currency

3.25 'Cash' as an asset has its own demand. However, in large cash economies, such as India, counterfeit currency poses a major threat to the economy. Countries have attempted to check counterfeiting of currency notes, as it disrupts smooth commercial transactions and has a multiplier effect on mainstream economy. India faces this problem, as immigrants become carriers for small amounts. The Indo-Bangladesh, Indo-Pakistan and Indo-Nepal borders are targeted for this purpose by agencies inimical to the interests of India.

3.26 The demand for currency is determined by a number of factors such as income, price levels and opportunity cost of holding currency. Currency is also used as a store of value, particularly in countries with low inflation or large 'shadow' economies. As per the RBI Annual Report for 2010-11, there was acceleration in currency in circulation in 2010-11 owing to increased demand on account of economic growth, high inflation and low yield on deposits for most part of the year.

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[12] Source: Thomson Reuters GFMS
[13] 'India: Heart of Gold Revival' – report of World Gold Council (WGC), 2010.

3.27 **TABLE-C3** reflects the increase and uptrend in the currency to GDP ratio. It may be pertinent to add that value as well as volume of the bank notes continues to increase. In a comparison over three years, it may be seen from the table that the value of bank notes outpaced that of volume, reflecting the continuing shift towards high denomination notes, particularly those of Rs.1,000 and Rs.500 in value.

3.28 The use of currency is attributed to three reasons by the RBI in it's Annual Report. Firstly, inflation remained high, often in double digits, in respect of commodities such as food grains, pulses, fruits and vegetables and milk during F. Yrs. 2009-10 and 2010-11 – where transactions are expected to be cash intensive. The share of agriculture and allied activities in nominal GDP increased from 17.6% in 2008-09 to 19% in 2010-11. Secondly, there was a step-up in real economic activity from 6.8% in 2008-09 to 8.5% in 2010-11. Thirdly the interest rate on bank deposits was generally lower than inflation during 2010-11, implying a negative real rate of return on deposits. The RBI in its latest annual report has attributed the growth and strength in the cash economy to factors like acceleration in per capita real GDP growth, commercialization of agriculture, urbanization and availability of higher denomination notes.

3.29 India has a large cash economy due to dependence on agriculture, and existence of non-formal sector and insufficient banking infrastructure. Further, the RBI has attributed the growth and strength in the cash economy to factors like acceleration in per capita real GDP growth, commercialization of agriculture and urbanization and availability of higher denomination notes. In a recent judgement delivered by Hon'ble Kerala High Court[14], the Court has suggested putting restrictions on possession and handling of cash above certain limits. In an earlier case, Hon'ble Supreme Court had also observed[15] that "*The nation is facing terrorist threats. Transportation of large sums of money is associated with distribution of funds for terrorist activities, illegal pay offs, etc. There is also rampant circulation of unaccounted black money destroying the economy of the country.*" Further, "*Money which is drawn from a Bank and legitimately belonging to the carrier, may still be used for an illegal purpose, - say to pay for a crime or to fund an act of terrorism. It may also be used for a routine illegal function - to make part payment of sale consideration for a property in cash, so that the full price is not reflected in the sale deed, resulting in evasion of stamp duty and registration charges and evasion of payment of capital gains and creation of black money. The carrying of such a huge sum, itself gives rise to a legitimate suspicion.*" The Court concluded that, "*Any bona fide measures taken in public interest, and to provide public safety or to prevent circulation of black money, cannot be objected as interference with the personal liberty or freedom of a citizen.*"

3.30 In recent years, the social sector expenditure by the Government particularly in rural areas in schemes like MGNREGS, etc., have also boosted demand for cash when the currency to GDP ratio peaked. The main difficulty with such transactions is that they have inadequate audit trail leading to leakages, estimated by developmental economists to vary between 15% and 40%. The oversight relies generally on financial audit. Increased currency use (**TABLE-C4**) in a fast growing economy is inevitable yet facilitates tax evasion, only underlying the increasing importance of proper adherence to KYC norms and reporting of large value transactions for tax purposes.

3.31 The Banking Cash Transaction Tax (BCTT) was in operation earlier to regulate large cash withdrawals. At the beginning of the Year 2012, the central banks across the world, including USA, Brazil, Australia, South Korea, Indonesia and Thailand, have pledged to bring down repo rates and release r liquidity into the system in the face of falling global growth expectations[16]. Such liquidity could flow i isky assets in the form of higher yielding currencies, like the Indian Rupee. Artificial liquidity is not desirable, as markets would be prone to using it for speculation and that would mean rising asset prices, with inflows in India likely to increase.

3.32 Demonetization of high denomination currency notes is believed to be one of the methods to 'kill' the extant black economy, and to curb the generation of black money. In India, demonetization was

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[14] P.D. Abraham v. CIT (Central), Cochin Cross Objection 112/2008 in ITA 323/2008 dated 16.12.2008
[15] Rajendran Chingaravelu vs. Uoi in CA No. 7914 of 2009; ORDER DATED November 24, 2009 (320 ITR 1)
[16] Media reports

implemented in 1946 and 1978. Experts have criticized that demonetization did not achieve the objective it was aimed at. Further, inflation over the years and a large cash economy requires higher denomination currency notes to keep the cost of monetary management of the economy low.

Trade Based Money Laundering[17]

3.33 Financial Action Task Force (FATF) defines Trade Based Money Laundering (TBML) as the process of disguising the proceeds of crime and moving value through the use of trade transactions in an attempt to legitimize their illicit origins. In simpler terms, TBML is the process of transferring / moving money through trade transactions. In practice, this can be achieved through the misrepresentation of the price, quantity or quality of imports or exports.

3.34 The international trade system is subject to a wide range of risks and vulnerabilities, which provide unscrupulous entities the opportunity to launder money. The relative attractiveness of the international trade system is associated with:

a) The enormous volume of trade flows, which obscures individual transactions and provides abundant opportunity to transfer value across borders;

b) The complexity associated with (often multiple) foreign exchange transactions and recourse to diverse financing arrangements;

c) The additional complexity that can arise from the practice of mingling illicit funds with the cash flows of legitimate businesses;

d) The limited recourse to verification procedures or programmers in order to exchange customs data between countries; and

e) The limited resources that most customs agencies have to detect illegal trade transactions.

3.35 Differing tax rates create incentives for corporations to shift taxable income from jurisdictions with relatively high tax rates to jurisdictions with relatively low tax rates in order to minimize income tax payments. For example, a foreign parent company could use internal "transfer prices" to overstate the value of the goods and services that it exports to its foreign affiliate in order to shift taxable income from the operations of the affiliate in a high-tax jurisdiction to its operations in a low-tax jurisdiction. Similarly, the foreign affiliate might understate the value of the goods and services that it exports to the parent company in order to shift taxable income from its high-tax jurisdiction to the low-tax jurisdiction of its parent. Both of these strategies would shift the company's profits to the low-tax jurisdiction and, in doing so, reduce its worldwide tax payments. It could also be attributed to anonymity to avoid overpricing due to identification of interest of large corporate in new business area.

3.36 Companies and individuals also shift money from one country to another to diversify risk and protect their wealth against the impact of financial or political crises. A common technique used to circumvent currency restrictions is to 'over-invoice' imports or 'under-invoice' exports. The primary method used is the falsification of import and export invoices. By comparing discrepancies between the value of exports reported by a country and the value of imports reported by its key trading partners, the quantum of money transferred from that country through the use of the international trade system can be estimated.

3.37 In the case of transfer pricing, the reference to over- and under-invoicing relates to the legitimate allocation of income between related parties, rather than customs fraud. In many cases, this can also involve abuse of the financial system through fraudulent transactions involving a range of money transmission instruments, such as wire transfers. In practice, strategies to 'launder' money usually combine several different techniques. Often these involve abuse of both the financial and international trade systems.

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[17] Inputs from DRI

3.38 The basic techniques of trade-based money laundering include:

(a) **'Over-Invoicing' and 'Under-Invoicing' of Goods and Services**: Money laundering through the over-invoicing and under-invoicing of goods and services, which is one of the oldest methods of fraudulently transferring value across borders, remains a common practice today. The key element of this technique is the misrepresentation of the price of the good or service in order to transfer additional value between the importer and exporter. Over-invoicing of exports is one of the most common trade-based money laundering techniques used to move money. This reflects the fact that the primary focus of most customs agencies is to stop the importation of contraband and ensure that appropriate import duties are collected.

(b) **Multiple-invoicing of Goods and Services**: Another technique used to 'launder' funds involves issuing more than one invoice for the same trade transaction. By invoicing the same good or service more than once, a money launderer or terrorist financier is able to justify multiple payments for the same shipment of goods or delivery of services. Unlike over-invoicing and under-invoicing, it should be noted that there is no need for the exporter or importer to misrepresent the price of the good or service on the commercial invoice.

(c) **Over-Shipment and Under-Shipment of Goods and Services**: In addition to manipulating export and import prices, a money launderer can overstate or understate the quantity of goods being shipped or services being provided. In the extreme, an exporter may not ship any goods at all, but simply collude with an importer to ensure that all shipping and customs documents associated with this so called "phantom shipment" are routinely processed. Banks and other financial institutions may unknowingly be involved in the provision of trade financing for these phantom shipments.

(d) **Falsely Described Goods and Services**: In addition to manipulating export and import prices, a money launderer can misrepresent the quality or type of a good or service. For example, an exporter may ship a relatively inexpensive good and falsely invoice it as a more expensive item or an entirely different item. This creates a discrepancy between what appears on the shipping and customs documents and what is actually shipped. The use of false descriptions can also be used in the trade in services, such as financial advice, consulting services and market research.

Generally, cases of over-invoicing or under-invoicing primarily designed to gain a tax advantage are considered customs fraud as also other manifestations as above and are also scheduled offences under PMLA for laundering of money linked to cross border trade.

3.39 Misuse of export promotion schemes such as drawback, Duty Entitlement Pass Book (DEPB), Duty Free Import Authorization (DFIA), Vishesh Krishi Gram Upaj Yojana (VKGUY), etc. also lead to generation and flow of 'black' money. Several cases of forgery of export promotion scheme scrips / licences, meant to claim duty exemption in imports have been detected, which highlight another aspect of 'black' money generation and movement. Smuggling of goods and contraband items, FICN, drug trafficking, arms deals and other illegal activities thrive on 'black' money. Illegal trade and movement of such goods is facilitated by the use of black money and in turn generates more 'black' money. These activities, by their very nature, are clandestine and can only operate through the use of 'black' money. All the activities abetted at each and every level of smuggling and illegal trade in such goods generate 'black' money which forms a part of the 'parallel' economy.

3.40 Indigenous manufacturing activities and units are also important areas for the generation and movement of black money. Many of the small manufacturing units are illegal and the manufacturing activity is never reported. All related transactions are in cash. Clandestine removal of goods from the Central Excise registered units and the production and distribution of goods in the unorganized sector is another source of generation of black money at the domestic level and leads to tax evasion. Misuse of CENVAT is another major area which accounts for significant evasion of tax and illegal movement of goods and generation of false invoices.

3.41 Evasion of service tax and generation and movement of money in the services sector is also an area which needs to be examined in detail. Payments for majority of the services are still made in cash and many such payments are not accounted for and no bill is issued against the provision of such services, thereby facilitating the generation and flow of 'black' money. The magnitude of 'black' money involved in such cases is expected to be huge as the sheer number of such service providers and their consumers is very large. For example, most of beauty parlors and hair cutting salons do not raise any bill against the services provided by them. Moreover, most of such services are in the unorganized sector. In cases where credit against payment of service tax cannot be claimed, the service provider and the consumer may agree to suppress the actual amount paid for providing the service. The amount over and above bill amount is thus the 'black' money generated in such transactions. For example, an architect may get into such an arrangement with a builder.

NPO SECTOR

3.42 Misuse of tax exemption provisions under sections 10(21), 10(23C) & 11, and manipulations in the claims of deductions, especially under sections 35 and 80G of the Income Tax Act are among the sources of generation of black money. India is a member of the Financial Action Task Force (FATF), an intergovernmental body which develops and promotes policies to protect the global financial system against money laundering and financing of terrorism. One of the areas of focus of FATF is safeguarding Non-Profit Organisation (NPO) sector from risk and misuse in money laundering and terror financing. An NPO Sector Assessment Committee constituted under the Ministry of Finance has reviewed the existing control and legal mechanisms for the NPO Sector and suggested various measures for improvement.

PARTICIPATORY NOTES

3.43 A Participatory Note (PN) is a derivative instrument issued in foreign jurisdictions, by a Foreign Institutional Investor (FII) / sub-accounts or one of its associates, against underlying Indian securities. PNs are popular among foreign investors since they allow these investors to earn returns on investment in the Indian market without undergoing the significant cost and time implications of directly investing in the India. These instruments are traded overseas outside the direct purview of Securities & Exchange Board of India (SEBI) surveillance thereby raising many apprehensions about the beneficial ownership and the nature of funds invested in these instruments. Concerns have been raised that some of the money coming into the market via PNs could be the unaccounted wealth camouflaged under the guise of FII investment. SEBI has been taking measures to ensure that PNs are not used as conduits for black money or terrorist funding. As per SEBI regulations, PNs can be issued to only those entities that are regulated by an appropriate regulator in the countries of their incorporation and are subject to compliance of "Know Your Client" norms. FIIs are also required to declare that these PNs have not been issued to Indian residents or non-resident Indians. Entities issuing PNs are required to submit to SEBI a monthly report which includes details of subscribers and details of securities underlying PNs. Though, the information sought from FIIs issuing PNs are being submitted regularly, the reporting requirements mandated by SEBI presently do not capture details of ultimate beneficial owners of these instruments.

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IV. EXTENT OF BLACK MONEY IN INDIA AND ABROAD

Approaches to estimating the size of the black economy

4.1 There is no uniformity of methodology or approach, or certainty of estimation relating to 'black' money. The main difficulty arises on account of the fact that the 'black' economy exists in the shadows. There is, therefore, wide variation in the figures reported as estimates are required to be made in indirect ways. The 'shadow' economy is not distinct, and the 'parallel' economy enmeshes the white economy. Different methods adopted have their own limitations.

4.2 One of the methods is the input / output method. Therefore, where the input-output ratio is known, the output can be estimated. The method consists of using this ratio along with the input to calculate the true output. When this is compared with the declared output, the difference between the true output and the declared output represents undisclosed output of the shadow economy. This method is deceptively simple and, though it may apply more appropriately to the industry sector, ignores the fast changing technological breakthroughs, which in turn contribute to the changing output input ratios. The method is difficult to apply in the context of countries where the tertiary sector grows at a faster pace compared to the primary and secondary sectors.

4.3 There is another approach – that of the monetarists, which is based on the fact that money is needed to circulate incomes in both 'black' and the 'white' economy. As the official economy is known, the difference between this amount and the money in circulation could be assumed to be the circulating 'black' component. In one model, the velocity of money (that is to say the number of times currency moves in a year) enables the estimation of income circulated annually. A comparison of this with the income captured in National Accounting System (NAS) gives the income not captured, which is the 'black' income generated. The assumption that NAS represents 'white' incomes is not always true – all incomes which are not captured in NAS are not 'black' incomes – for instance, incomes of the large unorganized sector.

4.4 The Survey Approach represents yet another method, wherein sample surveys are carried. They may be on the consumption pattern of a representative sample, which is then compared with the total consumption of the country. Sometimes, such surveys are carried to check illegal activities prevalent in a certain sample. In this method, the problems are of a truly representative sample, unambiguous set of questions, the willingness of persons in the sample size to reveal true facts implying a certain comfort level with the interviewers – as no one wants to admit any illegality before strangers.

4.5 There is also the 'fiscal approach' method, the underlying basis of which is that the economy comprises of several sectors, with each having its own sets of practices. The contribution of these sectors is separately worked, which when added would give the size of the entire 'black' economy. However, the manner of identifying the 'black component' in these sectors and assumptions suffer from inherent subjectivity of the researcher. This method has been used in various surveys.

Estimates of Black Money

4.6 Attempts have been made in the past to quantify 'black' income in India. Broadly speaking, the estimates made so far have followed two distinct approaches:

(i) Kaldor's approach of quantifying non-salary incomes above the exemption limit of income-tax. The Direct Taxes Enquiry Committee (i.e. Wanchoo Committee, 1971) used this method with some modifications in the report India Tax Reform (1956), and

(ii) Edgar L. Feige method of working out transaction-income on the basis of currency deposit ratio and deriving from it the 'black' income of the economy.

Kaldor's report

4.7 N. Kaldor in his report[18] estimated the non- salary income on the basis of the break-up of national income into:

(i) Wages and salaries,

(ii) Income of the self-employed, and

(iii) Profit, interest, rent etc.

4.8 Excluding wages and salaries from the contribution to net domestic product, he derived total non-salary income. For various sectors of the economy, on the basis of assumed proportions of non-salary incomes above the exemption limit, Kaldor estimated such non-salary income. An estimate of the actual non-salary income assessed to tax was made for each sector in order to arrive at the total non-salary income assessed to tax. The difference between the estimated non-salary income above the exemption limit and the actual non-salary income assessed to tax measures the size of the 'black' income.

Wanchoo Committee's estimate

4.9 Direct Taxes Enquiry Committee[19] followed the method adopted by Kaldor with suitable modifications. It estimated assessable non-salary income for the year 1961-62 at Rs. 2,686 crore and non-salary income actually assessed to tax to be of the order of Rs. 1,875 crore. Accordingly, the income, which escaped income-tax, was of the order of Rs.811 crore. This estimate of tax-evaded income required some adjustments because of exemptions and deductions allowed under the Income Tax Act. After making the rough adjustments, Wanchoo Committee found that *"the estimated income on which tax has been evaded (black income) would probably be Rs.700 crore and Rs.1,000 crore for the years 1961-62 and 1965-66 respectively". "Projecting this estimate further to 1968-69 on the basis of percentage increase in national income from 1961-62 to 1968-69, the income on which tax was evaded for 1968-69 can be estimated at a figure of Rs.1,800 crore."*

Rangnekar's estimate

4.10 Dr. D.K. Rangnekar, a member of the Wanchoo Committee, dissented from the estimates made by the Wanchoo Committee. According to him, tax evaded income for 1961-62 was of the order of Rs.1,150 crore, as compared to Wanchoo Committee's estimate of Rs. 811 crore. For 1965-66, it was Rs.2,350 crore, against Rs.1,000 crore estimated by the Wanchoo Committee. The projections of 'black' income for 1968-69 and 1969-70 were Rs.2,833 crore and Rs.3,080 crore respectively.

Chopra's estimate

4.11 Mr. O.P. Chopra, a noted Economist, published a series of papers[20] on the subject of unaccounted income. He prepared a series of estimates of unaccounted income (black income) for a period of 17 years, i.e., 1960-61 to 1976-77. Chopra's methodology marked a significant departure from the Wanchoo Committee approach and as a consequence, he found a larger divergence in the two series from 1973 onwards when the income above the exemption limit registered a significant increase. The broad underlying assumptions of his methodology are:

Only non-salary income is concealed;

(ii) Taxes other than income-tax are evaded and the study is restricted to only that part of income which is subject to income-tax. Thus, tax evasion which may be due to (a) non-payment or under-payment of excise duty, (b) sales-tax, (c) customs duties, or (d) substituting agricultural income for non-agricultural income, is not captured;

(iii) The efficiency of the tax administration remains unchanged;

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[18] India Tax Reform (1956)

[19] Also known as Wanchoo Committee, submitted its report in December, 1971

[20] Economic & Political Weekly, volume XVII, number 17 & 19 in April and May, 1982

(iv) The ratio of non-salary income above the exemption limit to total non-salary income has remained the same; and

(v) The ratio of non-salary income to total income accruing from various sectors of the economy remains the same.

4.12 The crucial finding of Chopra's study is that after 1973-74, the ratio of unaccounted income to assessable non-salary income has gone up, whereas the Wanchoo Committee assumed this ratio to have remained constant. As a consequence, after 1973-74, there is wide divergence between the estimates of Wanchoo Committee and those of Chopra. Chopra also corroborates the hypotheses that tax evasion is more likely to be resorted to when the rate of tax is comparatively high. His findings also support the hypothesis that increase in prices leads to an increase in unaccounted income. Further, he has given a significant finding that funds are diverted to non taxable agriculture sector, to convert unaccounted (black) income into legal (white) income. Chopra's study estimated unaccounted income to have increased from Rs.916 crore in 1960-61, i.e. 6.5% of Gross National Product (GNP) at factor cost, to Rs.8,098 crore in 1976-77 (11.4% of GNP).

NIPFP Study on Black Economy in India

4.13 National Institute of Public Finance and Policy (NIPFP) conducted a study[21] under the guidance of Dr. S. Acharya. The study defines 'black' money as aggregate of incomes which is taxable but which is not reported to tax authorities. The study, however, gives a broader definition of 'black' income and calls it as "*unaccounted income*" for purposes of clarity. As there is lack of sufficient data, the NIPFP study follows "*the minimum estimate approach*" that is to say, not being able to ascertain the most probable degree of under-declaration or leakage, the study uses a degree of under-declaration which could safely be regarded as the minimum in the relevant sector. In several cases the study has also made use of a range rather than a single figure of under-estimation.

4.14 While preparing the estimate of 'black' income, the study *excludes* incomes generated through illegal activities like smuggling, black market transactions, acceptance of bribes, kickbacks, etc. To prepare a global estimate of black income, the study confines itself briefly into six areas:-

(i) factor incomes received either openly or covertly while participating in the production of goods and services;

(ii) 'black' income generated in relation to capital receipts on sale of asset;

(iii) 'black' income generated in fixed capital formation in the public sector;

(iv) 'black' income generated in relation to private corporate sector;

(v) 'black' income generated in relation to export; and

(vi) 'black' income generated through over-invoicing of imports by the Private sector and sale of import licenses.

4.15 After aggregating the different components of 'black' income the study quantified the extent of 'black' money for different years as under:-

Year	Estimate for black money (Rs in Crore)	%age of GDP
75-76	9,958 to 11,870	15 to 18%
80-81	20,362 to 23,678	18 to 21%
83-84	31,584 to 36,784	18 to 21%

[21] Study commissioned in 1983 was completed and Report submitted in March, 1985

4.16 NIPFP study concludes that "*total black income generation of Rs. 35,784 crore or in round numbers Rs. 37,000 crore out of a total GDP at factor cost of Rs. 1,73,420 crore seems to be on the high side, although it turns out to be less than 30 per cent of GDP as against some extravagant estimates placing it at 50 or even 100 per cent of GDP. Taking out lower estimate, what we would say with some degree of confidence is that black income generation in the Indian economy in 1983-84 cannot be placed below 18 per cent of GDP at factor cost or 16 per cent of GDP at market prices.*"

4.17 While the NIPFP Report estimates the extent of 'black' economy (not counting smuggling and illegal activities) at about 20% of the GDP for the year 1980-81, Shri Suraj B Gupta, a noted economist, has pointed out[21] some erroneous assumptions in NIPFP study. He estimated 'black' income as 42% of GDP for the year 1980-81 and 51% for the year 1987-88. Shri Arun Kumar in his book[22] has pointed out the defects in NIPFP study and Gupta's method. He estimated the extent of 'black' income to be about 35% for the year 1990-91 & 40% for the year 1995-96.

4.18 Thus, it can be said that though 'black' money exists to a substantial extent in our economy, its quantum cannot be determined exactly.

International estimates of black economy

4.19 The estimates in studies done by economists employ assumptions for models, and cannot be called scientific. The 'black' economy exists in shadows. As the 'shadow' economy is enmeshed in the 'white' economy, the traces it leaves are used to detect and estimate the size of the 'black' economy by different methods, some of which have been discussed above. Each suffers from its own limitations. The last official study was done at the behest of the Ministry of Finance by NIPFP in 1985. The alternative estimates of 'black' income for the decade prior to 1985, compiled in the NIPFP Report (TABLE-D1), show the extent of variation in the estimates.

4.20 The 'black', 'shadow' or 'underground' economy is all the money and jobs generated outside the official economy, whether legally or illegally. A moot question may be how India compares with other countries in the world. In more than fifty countries around the world, such economy is at least forty percent the size of the documented G.D.P. Though nailing down shadowy numbers is difficult, as per Dr Friedrich Schneider of Austria's Kepler University of Linz, who co-authored a report[23] (with Claudio Montenegro of the World Bank), the margin of error factored into the reports is 15%. At one end of the scale is U.S.A., where the 'shadow' economy equalled only 9% of the country's official economy. On the other end in percentage terms, the biggest 'underground' economy relative to the official economic activity is the former Soviet republic of Georgia, with the 'shadow' economy being as high as 72.5%. The higher the component of such economy, the more the Government loses on revenues it could use to improve infrastructure, reduce disparities in income and provide better education and health services. Greece has a 'shadow' or 'underground' economy equalling 31% of G.D.P. as per a later report.[24] One notable feature of their report is that from 1999 to 2007 'shadow' economies appear to have risen for every country. The reason attributed is the increase in taxation and increasing regulations. However, in case of Peru, apparently the huge 'shadow' economy arose from growing urbanization and more commerce. Patently illegal activities, like drug trade, burglary, kidnappings were not included for purposes of their report. What was included was 'all market based legal production of goods and services that are concealed from public authorities' to avoid payment of taxes. Regardless of what taxpayers may like to believe, Schneider and co-authors suggest not merely efficient tax collecting and lighter regulation, but also to find a way to make work in the official economy more attractive and thereby reduce the incentives to participate in the shadow world.

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[21] 'Black Income in India', Sage Publications (1992, first edition)
[22] 'The Black Economy in India' (1999, second edition)
[23] 'Shadow Economies of 150 Countries' – published prior to the report cited next
[24] Friedrich Schneider & Andreas Buehn & Claudio E. Montenegro, 2010 "Shadow Economies All over the World: New Estimates for 162 Countries from 1999 to 2007," Working Papers wp322, University of Chile, Department of Economics

4.21 In his report, Schneider has estimated the size of 'shadow' economies using the DYMIMIC and Currency demand method for developing, emerging and developed economies. The size of 'shadow' economies of 28 Asian countries in the years 1999-00 to 2002-03 (TABLE-D2) shows that the 'shadow' economy in India is below the average of these countries, although the pattern of marginal annual increase of 'shadow' economy to the GDP ratio in the three years is common to most countries, including India.

Illicit financial flows from India

4.22 Another important aspect which merits consideration is the illicit financial flows of 'black' money transfers from India since independence. On the one hand there has been intense speculation on illicit ..cial flows from India and on the other hand intense attention in the media has heightened the sense of public awareness and concern on the need to curb such generation and outflows. Though no official studies have been carried out in recent years, Dev Kar of the Global Financial Integrity Centre for International Policy, Washington estimates that since Independence, a total of US $ 213.2 billion was shifted out of India between 1948 and 2008, which constituted[25] 16.6% of India's GDP at the end of 2008. In his analysis, the researcher on the basis of data, confirmed that economic reforms since 1991 had led to faster growth, though such rapid economic growth in the post reform period led to more skewed income distribution. In the post reform period, the paper also indicates that faster economic growth appears to go hand in hand with larger illicit flows and worsening of income distribution. Since 1991, with more trade openness, the size of the external trade to GDP doubled from 10.8% to 21.7%, which showed statistically significant openness and was positively related to trade-mis-invoicing. In the paper a simulation model identifies sets of complex drives, namely, government deficit; inflation and inflationary expectation; structural factors such as increasing trade openness, faster rates of economic growth, their impact on income distribution and overall governance captured as a measure of underground economy. Illicit flows are also driven by the desire to hide ill-gotten wealth. The corollary of increased trade liberalization provided more opportunities to related and unrelated companies to mis-invoice trade, which support the view that economic reform and liberalization is needed to be adopted with strengthened institutions and governance, if governments are to curtail capital flight. In other words, deregulation without oversight would not prevent abuse of international trade for transferring capital abroad. Kar also suggests that proposal to get money secreted abroad back into the country through amnesty for offenders to return the money by a certain date failing which a huge penalty and prosecution would follow, would be a non-starter. Such tax amnesty does nothing to encourage persons having secreted money abroad to bring it to the country as they are not subject to any tax in the first place. Any attempt to declare such illicit funds secreted abroad through an unilateral government declaration would also fall flat, as such a declaration would not materially change matters. The funds would continue to be illicit as before while their owners would continue to have access to such funds outside the country in full co-operation of secrecy jurisdictions without any knowledge of Indian authorities.

Study commissioned by Government of India (2011)

4.23 The Government has commissioned fresh study on unaccounted income / wealth both inside and outside the country, bringing out the nature of activities engendering money laundering and its ramifications on ..onal security to be conducted by three national-level institutes, viz. National Institute of Public Finance and Policy (NIPFP), National Institute of Financial Management (NIFM) and National Council of Applied Economic Research (NCAER).

The terms of reference of the study are as under:

(i) To assess/survey unaccounted income and wealth both inside and outside the country.

[25] An empirical study on the transfer of black money from India 1948 - 2008 – Dev Kar from Economic and Political Weekly, April 9, 2011 – Vol.XLVI No.15

(ii) To profile the nature of activities engendering money laundering both inside and outside the country with its ramifications on national security.

(iii) To identify important sectors of economy in which unaccounted money is generated and examine causes and conditions that result in generation of unaccounted money.

(iv) To examine the methods employed in generation of unaccounted money and conversion of the same into accounted money.

(v) To suggest ways and means for detection and prevention of unaccounted money and bringing the same into the mainstream of economy.

(vi) To suggest methods to be employed for bringing to tax unaccounted money kept outside India.

(vii) To estimate the quantum of non-payment of tax due to evasion by registered corporate bodies.

The study is expected to be completed by September 2012.

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V. EXISTING LEGAL PROVISIONS AND ADMINISTRATIVE MACHINERY TO DEAL WITH BLACK MONEY

As the sources of generation of black money, and the forms it takes, vary, there can be no single or omnibus law to deal with the menace. The legal framework against black money generation and its control is, accordingly, dispersed in penal laws, economic laws, tax laws and various regulatory mechanisms, and the concomitant administrative machinery to enforce these laws and regulations.

LEGAL PROVISIONS

5.1 Income Tax Act, 1961

Section 131: The powers u/s 131 of IT Act are co-existant with that of a Civil Court trying a suit. Under Section 30 of CPC read with Rule 12, 14 & 15 of Order – XI, the powers of a court are:-

i. Discovery and inspection - order XI

ii. Summoning and attendance of witness - order XVI

iii. Issue of commission to examine a witness - order XXVI (Rules 1 to 8)

Section 132: Search can only be authorized by an officer of rank of Commissioner or above. Certain conditions are required to be fulfilled before authorizing a search. Powers under section 132 include power to seize books, documents, cash, jewellery, other valuables etc and the same can be retained for a certain period of time.

Section 133A: Survey at business premises for inspecting books of accounts, tallying stock, verification of cash, etc.

Section 133B: Collection of information from tax-payers.

Section 133: Power to requisition information from third parties.

Section 136: Declares income tax proceedings as judicial proceedings in case of:-

i. Section 193 of IPC – furnishing or fabricating false evidence;

ii. Section 196 of IPC – using evidence known to be false;

iii. Section 228 of IPC – intentional insult or interruption to public servant sitting in a judicial proceeding;

iv. Section 195 of Cr PC – taking cognizance of an offence of giving false evidence, fabrication of evidence, abetment or criminal conspiracy to fabricate evidence (complaint to be made to Judicial Magistrate as Chapter XXVI of Cr PC is excluded).

Chapter XXI of the Income Tax Act,1961: Provides for monetary penalties at different rates for various defaults such as concealment of income; failure to comply with statutory notices, file tax returns / sign statements, maintain / retain books of account or documents, deduct / collect taxes at source; etc. Maximum penalty prescribed is 300% for the tax sought to be evaded.

Chapter XXII of the Income Tax Act, 1961: Provides for prosecutions against various offences such as willful evasion of tax; failure to furnish tax returns or produce accounts / documents, falsification of accounts / false statement in affidavit; failure to deduct and deposit taxes; etc. The maximum sentence is for 7 years rigorous imprisonment with fine

5.2 Wealth Tax Act, 1957

The Wealth Tax Act, 1957 contains provisions that are at par with different provisions under the Income Tax Act, 1961 as enumerated above.

5.3 Benami Transactions (Prohibition) Act

5.3.1 In the implementation of the Income Tax Act it was found that many persons entered into benami transactions, to distance themselves from the real transactions. A benami purchase is a purchase in name of another person, who does not pay the consideration but merely lends his name, while the control vests in another person who actually purchases the property and he is the beneficial owner. The Law Commission was requested to examine the subject of benami transactions and its ramifications. To implement the recommendations of the 57th Report of the Law Commission, the Benami Transactions (Prohibition) Bill was introduced in Parliament, which became **Benami Transactions (Prohibition) Act** after receiving assent of the President on **5th September, 1988.** The bill inter-alia provided for the following, viz :-

a) entering into *benami* transactions after the commencement of the new law will be an offence, with an exception for the transfer of properties by the husband or father for the benefit of the wife or unmarried daughters;

b) all the properties *held benami* will be subject to acquisition by such authority, in such manner and after following such procedure, as may be prescribed by rules under the proposed legislation. As a result of the provisions of the Ordinance and the prohibition of entering into *benami* transactions, the *benamidar* would be acquiring the rights to the property by the mere lending of his name and without investing any money for the purchase of such property. Accordingly, it is provided that no amount shall be payable for the acquisition of any property held *benami*;

c) Sections 81 and 94 of the Indian Trusts Act, 1882, shall also be repealed.

5.3.2 During the process of formulating the rules for implementing certain provisions of the 1988 Act, it was found that the provisions of the aforesaid Act were inadequate to deal with *benami* transactions as the Act, *inter alia*, -

(i) did not contain any specific provision for vesting of confiscated property with the Central Government;

(ii) did not have any provision for an appellate mechanism against an action taken by the authorities under the Act, while barring the jurisdiction of a Civil Court;

(iii) did not confer the powers of a Civil Court upon the authorities for its implementation.

5.3.3 In view of the above, a comprehensive legislation became necessary in order to prohibit holding property in *benami* and to restrict right to recover or transfer property held *benami* and also to provide a mechanism and procedure for confiscation of property held *benami*. It was, therefore, felt necessary to repeal the 1988 Act and enact a new comprehensive legislation to deal with *benami* transactions. Accordingly, a new bill was introduced in Parliament in 2011, which is under examination of the Standing Committee The Bill, inter-alia, provides for the following:-

(i) It prohibits *benami* transactions by any person, except in the case of *benami* transactions entered into in the name of spouse, brother or sister or any lineal ascendant or descendant;

It provides that *benami* property arising out of prohibited *benami* transaction is liable to confiscation by the Central Government and such property shall vest absolutely in the Central Government without paying any compensation;

(ii) It prohibits right of the *benamidar* to recover property held *benami*;

(iv) it provides that the Initiating Officer, the Approving Authority and the Administrator shall be the authorities for the purpose of the Bill;

(v) It provides that the Adjudicating Authority and the Appellate Tribunal established under the Prevention of Money-Laundering Act, 2002 shall respectively be the Adjudicating Authority and

the Appellate Tribunal for the purposes of the Bill and any person aggrieved by an order of Adjudicating Authority may prefer an appeal to the Appellate Tribunal;

(vi) It provides that any party aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court on any question of law;

(vii) it enables the Central Government, in consultation with the Chief Justice of the High Court, to designate one or more Courts of Session as Special Court or Special Courts for the purpose of the Bill;

(viii) it provides penalty for entering into prohibited *benami* transactions and for furnishing any false documents in any proceeding under the Bill;

x) It provides for transfer of any suit or proceeding in respect of a *benami* transaction pending in any Court (other than High Court) or Tribunal or before any authority to the Appellate Tribunal as provided in the Bill;

(x) it also proposes to make consequential amendments in the Prevention of Money Laundering Act, 2002.

5.4 Foreign Exchange Management Act (FEMA), 2002[27]

Enforcement Directorate takes up investigations under FEMA in specific cases relating to contraventions in foreign exchange transactions, generally by persons resident in India. Unauthorized holding of funds outside India by any person resident in India, is a contravention of section 4 of FEMA. Upon coming to the conclusion of such a charge being established in adjudication proceedings under FEMA, in terms of section 13(1) of the Act, a suitable penalty can be imposed. Further, besides the imposition of penalty, in terms of section 13(2) of FEMA, the adjudicating authority can order confiscation of the amounts lying abroad and direct the bringing back into India of such foreign exchange holdings. FEMA is a civil law and hence no criminal prosecution can be launched.

5.5 Prevention of Money Laundering Act (PMLA), 2002[28]

5.5.1 PMLA is a criminal law which came into force from 1.7.2005. Under the scheme of the Act, money laundering linked to the predicate scheduled offences is liable for punishment. There are 156 offences in 28 different statutes which are Scheduled Offences under PMLA. Section 3 of PMLA defines the offence of money laundering. Once the agency concerned with a predicate scheduled offence registers a case, Enforcement Directorate takes up investigations under PMLA to ascertain the proceeds of crime generated from the predicate offence booked by the Law Enforcement Agency. In case, a prima-facie case of generation of proceeds of crime and laundering thereof is made out, PMLA provides for seizure (section 17) and attachment of laundered properties (section 5). The action of seizure and attachment is required to be adjudged by the Adjudicating Authority under PMLA (section 8). The persons, both natural and legal entities, who are accused of the offence of money laundering linked to the scheduled offence can be prosecuted in Special Courts as per section 44 of PMLA. Section 4 of PMLA provides for rigorous imprisonment of minimum three years which can extend up to seven years and a fine of up to Rs.5 lakhs on conviction by the Court of persons who have been accused of the offence of money laundering. The conviction can extend up to 10 years if the offence of money laundering is linked to narcotic trafficking. The property attached under PMLA can be confiscated by the Adjudicating Authority (section 8) after the conviction by the Court of the accused in the trial for scheduled offence. In terms of PMLA, the tainted proceeds, if found parked overseas, can also be restituted through Mutual Legal Assistance after the collection of such evidence through the process of Letter of Requests with the foreign administration. Chapter IX of PMLA sets out the procedure for reciprocal arrangements with Contracting States for seizure, attachment and confiscation of assets found lying overseas. India has signed Mutual Legal Assistance Treaty (MLAT) with 26 countries and by virtue of the provisions of PMLA, Government of India

[27] Inputs from Directorate of Enforcement
[28] Inputs from Directorate of Enforcement

is fully armed with legal measures to get the tainted assets repatriated back to the country on conviction of persons accused of money laundering. Till the conviction, the assets traced overseas can be requested to be seized or frozen by foreign jurisdictions.

5.5.2 Section 12 of PMLA requires financial sector entities (banking companies, financial institutions and intermediaries) to verify the identity of their clients, maintain records and report suspicious / cash transactions (STR / CTR) to FIU-IND. Director, FIU-IND is empowered to conduct inquiry and impose sanctions against financial sector entities for non-compliance with section 12. FIU-IND conducts analysis of information received under PMLA and in appropriate cases disseminates information to relevant intelligence / enforcement agencies, which include Central Board of Direct Taxes, Central Board of Excise & Customs, Enforcement Directorate, Narcotics Control Bureau, Central Bureau of Investigation, Intelligence agencies and regulators of financial sector.

5.5.3 It may be seen that under both the Acts, i.e. FEMA and PMLA, investigation is initiated against specific persons, both natural and legal, and such action is initiated on the basis of specific information.

5.6 Customs & Narcotic Drugs and Psychotropic Substances (NDPS) laws[29]

5.6.1 The penal provisions under the Customs Act, 1962 are Section 112 (penalty for improper importation of goods), Section 114 (penalty for attempt to export goods improperly), Section 114A (penalty for short levy or non levy of duty) under which penalty equivalent to the value of the offended goods can be imposed. Under Section 114AA (penalty for use of false and incorrect material), penalty equivalent to five times of the value of the offending goods may be imposed.

5.6.2 Besides imposing penalty any person who has contravened any provision of the Customs Act, 1962, can be prosecuted for committing such offence under the provisions of Section 132 and Section 135 of the Act. Under Section 132 of the Act the offender is punishable with imprisonment for a term which may extend to two years or with fine or with both. Under Section 135 of the Act the offender is punishable with imprisonment for a term which may extend to seven years.

5.6.3 Similarly, under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985, stringent penal provisions exist under Section 21 to Section 32 of the Act for imprisonment varying between six months and twenty years, depending on the quantity of the contraband and seriousness of offence. In addition to this a fine may be imposed on the accused which may vary between Rs.10,000 and Rs.2,00,000. In the case of subsequent conviction death sentence can also be awarded under Section 31A of the Act.

5.6.4 The offences under the Customs Act, 1962 and the NDPS Act, 1985 are "Predicate Offence" under the PML Act, 2002. Hence the tainted proceeds acquired by contravening the provisions of the Customs Act, 1962 and the NDPS Act, 1985, can be attached and confiscated under the PML Act, 2002. The existing provisions relating to confiscation and punishments are considered adequate, but the problem is found to be in having proper administrative framework, implementation and cooperation among various agencies.

5.7 Prevention of Corruption Act & United Nations Convention Against Corruption (UNCAC)

5.7.1 The Prevention of Corruption Act, 1988 (No.49 of 1988) has been enacted to consolidate and amend the law relating to the prevention of corruption and for matters connected therewith. It came into force with effect from 9th September, 1988. The maximum punishment under the P C Act is 7 years rigorous imprisonment with fine. This is less than maximum sentence of 10 years for serious fiscal crimes such as narcotics and laundering proceeds of crime.

5.7.2 India has ratified the United Nations Convention against Transnational Organised Crime and its three protocols and the United Nations Convention against Corruption. The Convention enumerates in detail the measures to prevent corruption, including the application of prevention policies and practices,

[29] Inputs from Directorate of Revenue Intelligence

the establishment of bodies for that purpose, the application of codes of conduct for public servants, and public procurement. It recommends promoting transparency and accountability in the management of public finances and in the private sector, with tougher accounting and auditing standards. Measures to prevent 'money-laundering' are also provided for, together with measures to secure the independence of the judiciary. Public reporting and participation of society are encouraged as preventive measures. The Convention recommends the State Parties to adopt such legislative and other measures as may be necessary to establish a whole series of criminal offences. These are:

(I) Corruption of national or foreign public officials and officials of public international organizations;

(II) Embezzlement, misappropriation or other diversion by a public official of any public or private property;

(III) Trading in influence; and

(Iv) Abuse of functions and illicit enrichment.

5.7.3 In the private sector, the Convention calls for the creation of offences of embezzlement and corruption. There are other offences relating to 'laundering' the proceeds of crime, handling stolen property, obstructing the administration of justice, and participating in and attempting embezzlement or corruption. Following ratification of UNCAC, the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill, 2011 was introduced in the Lok Sabha on March 25, 2011. The Bill empowers the Central Government to enter into agreements with other countries (contracting states) for enforcing this law and for exchange of investigative information.

5.8 **State laws**

5.8.1 The states of the Indian Union have a wide array of powers under List-II of the Constitution to control economic activity by way of levying taxes, and secondly, by way of controlling certain industrial and commercial activities, as well as movement of goods and services.

5.8.2 Stamp duty is levied by the state governments on all transfers of immovable property. The levy of stamp duty is a State subject and thus the rates of stamp duty vary from State to State. Stamp duty is a transaction tax; it is charged as a percentage of the transaction value of the property. It varies from around 4% in Mumbai to about 13% in Kerala. Haryana charges 6% as stamp duty on properties, while it is 8% in Uttar Pradesh. Most of the states charge around 6%-8%. Circle rates basically lay down the minimum valuation of lands and immovable properties. Circle rates, as and when revised and notified by the relevant State Government, are taken into consideration by the competent registering authorities, at the time of registration of instruments relating to land and immovable properties. Lack of uniformity in stamp duty rates, which are also perceived to be high, and infrequent updating of circle rates, however, results in revenue leakages and accumulation of 'black' money in immovable property.

5.8.3 In the recent investigations by Income Tax department on the mining industry in Karnataka, it has come to light that state law allows unregistered dealers (URD) to trade in minerals, possibly as a measure to [illegible] revenue. This is contrary to the Central Mines and Minerals (Regulation and Development) Act, 19[illegible] and encourages illegal mining and unregulated trade in minerals. It also came to light that there was mismatch between exports and inward remittance, as also between information available with different authorities.

ADMINISTRATIVE MACHINERY

5.9 The principal agency to tackle the generation and control of 'black' money is the Central Board of Direct Taxes (CBDT), which deals with all direct taxes. The CBDT – including its Commissionerates and Directorates of Investigation, International Taxation, Transfer Pricing, Exemption, Intelligence and Criminal

Investigation, etc. – is responsible for administration of direct tax laws; the Central Board of Excise and Customs (CBEC), including Commissionerates of Customs, Central Excise and Service Tax; DRI, DGCEI, etc., implements indirect tax laws relating to customs, central excise, service tax, etc. Other concerned agencies are: Central Bureau of Narcotics (CBN) which regulates the production and sale of narcotics; Directorate of Enforcement (ED) which enforces the Prevention of Money-Laundering (PMLA) and Foreign Exchange Management Act (FEMA); Central Economic Intelligence Bureau (CEIB) which is tasked with ensuring proper sharing and analysis of economic intelligence; and Financial Intelligence Unit (FIU-IND) which collects and analyzes data from the banking and financial sector. Other central organizations such as Narcotics Control Bureau (NCB) under the Ministry of Home Affairs; Serious Frauds Investigating Office (SFIO) and Registrars of Companies under the Ministry of Corporate Affairs; and regulators such BI, SEBI, FMC, IRDA, TRAI, etc., also contribute to formulation and implementation of the regulatory framework that helps check generation of black money and growth of black economy. Sales Tax departments of various state governments implement VAT in the states.

5.10 One of the principal concerns is severe shortages of manpower (Table below), particularly in the CBDT and CBEC, affecting the effective functioning of these vital bodies.

TABLE[30]

Sl.	Name of Agency	Sanctioned	Working	Shortage
1	CBDT	57,793	42,791	15,002
2	CBEC	69,164	55,419	13,745
3	CBN	1,245	777	468
4	ED*	2,064	571	1,493
5	CEIB	113	78	35
6	FIU	74	28	46

* *The figures are not as per Performance Budget, 2011, but after sanction of additional manpower*

5.11 Effective implementation of the laws lie not only in the individual laws by the concerned agencies, but also proper inter-agency coordination especially where one law overlaps another law, and its administrative machinery affects the other. Lack of coordination, or even conflict of interest, is the second major problem to be tackled. Another area of focus for inter-agency cooperation is information-sharing. This matter is also receiving attention in many a fora[31] and it is noted that information exchange has to become more professional. The EIC in the Ministry of Finance oversees intelligence sharing among different central economic intelligence and enforcement agencies through CEIB and Regional Economic Intelligence Committees (REICs). We understand that recently a comprehensive review of the role of CEIB has been undertaken by an expert group, and steps are being initiated to make the central economic intelligence sharing system more effective.

5. Generation of black money from legitimate activities, such as businesses or professions, non-reporting of income, overstated expenses, etc., undermines the economy, its tax-base and the rule of law, and creates inequalities. The way to fight this menace is through comprehensive and better reporting mechanism, data-mining and analysis. We understand that substantial progress has been made by CBDT, CBEC and FIU in this direction, but still a lot remains to be done.

[30] Performance Budget, 2011

[31] Review of National Security 2001, Committee on CEIS, ongoing PM's review through NSCS, etc.

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5.13 The Central Vigilance Commission (CVC) is the principal central government anti-corruption watchdog; with anti-corruption units of the Central Bureau of Investigation (CBI) as its principal implementing arm. Vigilance department / bureau of different state governments are anti-corruption bodies in respect of employees of the state government. In some states, the institution of the Lokayuktas is also in place. Besides these institutions, the C&AG provides oversight for the central government and central PSUs, while the State AG provides the same for the state government and its organizations. Of late, the C&AG has become proactive and as a result several 'scams' have surfaced in the public domain. However, fact remains that although the C&AG or state AGs have been functioning for several decades, leakages in public expenditure has continued unabated. Both oversight and enforcement mechanisms against corruption need to be strengthened.

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VI. MEASURES TO TACKLE BLACK MONEY

6. There are two dimensions of the issue of black money – first, its generation and, second, its consumption and use, including laundering of black money back to mainstream economy. Dealing with this menace has to cover both these aspects. So far as generation of black money from crime or corruption is concerned, its remedy does not lie merely in legislative or enforcement domains but also in finding much deeper socio-economic solutions. We have touched upon some of these aspects. However, generation of black money from legitimate activities has been dealt with extensively, and we make several recommendations in this regard. Further, consumption and laundering of black money, if effectively tracked and controlled, may have the 'squeeze effect' on the overall activities resulting in creation and sustenance of black economy. While there may not be any need to have new law to especially deal with black money black economy, various existing laws need to be comprehensively reviewed by the concerned administrative ministries on a regular basis keeping in view the changing economic scenario, and provisions dealing with violations need to be strengthened accordingly.

Strategy to tackle black money

The Committee has identified following strategy to tackle black money:-

- ☐ Preventing generation of black money
- ☐ Discouraging use of black money
- ☐ Effective detection of black money
- ☐ Effective investigation & adjudication
- ☐ Other steps

Preventing generation of black money

6.1 India must ensure transparent, time-bound & better regulated approvals / permits, single window delivery of services to the extent possible and speedier judicial processes. The Electronic Delivery of Services Bill, 2011 that seeks to provide for electronic delivery of public services by the government to all persons to ensure transparency, efficiency, accountability, accessibility and reliability in delivery of such services has been tabled before the Parliament in December, 2011.

6.2 The fight against the monstrosity of black money has to be at ethical, socio-economic and administrative levels. At the ethical level, we have to reinforce value / moral education in the school curriculum and build good character citizens, particularly highlighting the ills of tax evasion and black money. At the socio-economic level, the thrust of public policy should be to discourage conspicuous & wasteful consumption / expenditure, encourage savings, frugality and simplicity, and reduce the gap between the rich and the poor.

6.3 The Government is also considering legislating public procurement law. The Public Procurement Bill, 2012 intends to regulate public procurement by all ministries and central government departments. It aims at ensuring transparency, fair and equitable treatment of bidders, promote competition, and enhance efficacy and economy in the public procurement process.

6.4 In order to ensure transparent and efficient allocation of natural and man-made resources, oversight in the form of comprehensive regulations and ombudsman for grievance redressal, particularly for scarce resources – as in land, minerals, forests, telecom, etc. – need to be introduced and implemented expeditiously.

6.5 Social sector schemes involving huge public expenditure under various programmes reportedly suffer from possible manipulations and leakages. Direct transfers to the accounts of beneficiaries can provide a solution, as it would prevent manipulations like bogus muster rolls, etc. While efforts such as

UID and direct transfer of subsidies will stop leakages in some sectors, in other sectors the problem will have to be addressed differently. We, accordingly, recommend that social audit be made mandatory for all social sector schemes that do not involve direct transfer of credit to the bank account of the beneficiary, at the district / field level, and a second and subsequent AG audit at the HQ level. We also recommend that a system of random inspections by teams of sponsoring Ministry / Department / Agency may monitor utilization of public funds for social sector schemes.

6.6 There should be a dedicated training center for all law enforcement agencies dealing with financial crimes and offences, as this requires special skills. A delegation from the CBDT had recently visited USA and studied the training methodology of the Federal Law Enforcement Training Center (FLETC), Brunswick G^ A multi-disciplinary institution for training in investigation of financial crimes may be established on t. nes of FLETC of USA.

6.7 Oversight in the private sector is almost absent, except for some professionally managed companies. It mainly consists of self-regulation, and audit under the Company and Income Tax laws. That the system of professional audit may be quite ineffective even in professionally managed enterprises is aptly demonstrated by the Satyam case. We are of the view that the burden of dual audit should be reduced to single audit (for both company and tax law) and the audit system be detached from the management and control of the business. We, therefore, recommend that the central government establish a regulator (under Company law / Income Tax law) to empanel auditors in different grades and randomly assign them to the private sector firms, based on category and payment capacity, with mandatory rotation and maximum tenure of two years.

6.8 The proposed national level GST regime should be expeditiously implemented, as the spin-off from its implementation would provide adequate resources to more than compensate the loss apprehended by certain state governments.

6.9 At present, no government agency has complete database of NPOs. CBDT has the largest database about this sector. There may be information with other agencies such as MHA, CEIB, etc. It is desirable that CBDT be assigned the role of a centralized agency with which every NPO would require to be registered and would be allotted a unique number. This would be in line with the decision taken by the Government in the light of possible misuse of the sector in undesirable activities. There are suggestions made by the NPO Sector Assessment Committee, an inter-ministerial body, which should be accepted and the office of DGIT (Exemption) appropriately strengthened in terms of manpower, infrastructure and capacity building.

6.10 There should also be sharing of real-time data under Foreign Contribution Regulation Act (FCRA) and DGIT (Exemption) and coordination amongst various enforcement agencies. The registration under section 12AA and approvals under sections 10(23C) / 10(21) / 35 / 80G of the Income Tax Act for charitable organizations are required to be in accordance with international best practices. For this purpose, the Income Tax Department should devise a mechanism to facilitate effective monitoring and better control over the tax administration of NPOs through modification in existing procedure of granting registrations or according approvals by allotting a PAN-linked system-generated specific number, making mandatory the quoting of this number in the tax returns and devising suitable changes in the existing tax return fo , his would filter out bogus claims and would also help in maintaining authentic data base of NPOs.

6.11 Accountability of both public and private offices needs to be enhanced. As we are mainly concerned here with public sector accountability, we recommend that apart from good practices being followed such as Fiscal Responsibility and Budget Management (FRBM) Act and outcome budget, performance-linked appraisal system of rewards and punishments, already under consideration, should be expeditiously implemented.

6.12 In the recent investigations by Income Tax department on the mining industry in Karnataka, it has come to light that state law allows unregistered dealers (URD) to trade in minerals, possibly as a measure

to raise revenue. This is contrary to the central Mines and Minerals (Regulation and Development) Act, 1957 and encourages illegal mining and unregulated trade in minerals. This situation requires immediate remedy and all laws relating to licensing and regulation in mining need a thorough review. It also came to light that there was mismatch between exports and inward remittance, as also between information available with different authorities. The anomaly between the central and the state laws with regard to URDs should be immediately removed.

Discouraging use of black money

6.13 Government may consider amending existing laws (The Coinage Act 2011, The Reserve Bank of In ct 1934, FEMA, IPC, Cr PC, etc.), or enacting a new law, for regulating the possession and transportation of cash, particularly putting a limitation on cash holdings for private use, and including provisions for confiscation of cash held beyond prescribed limits. This would address the concerns expressed by various courts, and also the Election Commission of India for reducing the influence of money power during elections.

6.14 To reduce the element of black money in transactions relating to immovable properties, provision for NOC should be introduced in the Income Tax law with safeguards to reduce administrative complications and increased ease of compliance, so that an appropriate and uniform data-base is also set up, and a proper national-level regulation is put in place. The new system should be computer driven with minimal interface between the tax authorities and the tax-payer, and enforced by a dedicated unit within the investigative machinery of the Income Tax Department on the basis of pre-determined parameters and standard operating procedures. The electronically generated NOC, within a specified period, would also act as a tax clearance certificate.

6.15 The Accounting Standard No.7 should be modified by the ICAI to be made applicable to real estate developers also. AS-7 and AS-9 should be notified under the Income Tax Act, 1961.

6.16 There is no uniformity in the matter of levy of agricultural income tax among states. Agriculture generates around 14 per cent[32] of the country's GDP. Giving credit to agricultural income for income tax purposes without verification of claim allows an avenue for bringing black money into the financial system as agricultural income. State governments may consider levy of agricultural income tax with facility for computerized processing and selective verification. This will on the one hand enhance revenues of state governments, and on the other hand prevent laundering of black money in the garb of agricultural income.

Effective detection of black money

6.17 The regulation and enforcement of KYC norms in the co-operative sector may be strengthened by the State Governments as well as the Central Government. Responsibility may be fixed for any lapse in this regard, as well as for any subsequent failure to alert authorities as regards any suspicious transactions in such accounts.

6.18 The RBI could consider stricter implementation of KYC norms and limit number of accounts that ca e introduced by a single person, the number of accounts that can be maintained in the same branch by / entity and alerts about same address being used for opening accounts in different names. Stricter adherence to, and enforcement of, KYC norms is needed for ensuring proper compliance by banks and financial institutions. The Government, as well as the RBI, also need to put a better regulatory framework in place and act promptly against errant persons / institutions.

6.19 The Ministry of Corporate Affairs, which already has a centralized data-base of all companies, may examine placing a cap on the number of companies operating from the same premises and number of companies in which a person can become director.

[32] 2010-11, Economic Survey, 2012

6.20 The government may consider introducing alternative financial instruments to reduce the attraction of gold as savings instrument. It may also consider revising customs duties, as also graded wealth tax, on gold and jewellery to discourage investments in unproductive assets. The taxation structure on bullion and jewellery, including VAT / Sales Tax should be harmonized.

6.21 Better reporting / monitoring systems are to be put in place to trace the dealings in bullion / jewellery through the Income Tax / Customs / Sales Tax Acts. While the Income Tax Department has made it mandatory to obtain PAN or Form-60 / Form-61 for purchase of bullion above Rs.5 lakh, similar rules should be framed for purchase / sale of bullion / jewellery, and collection of tax at source on purchases especially in cash.

6 Use of banking channels and credit / debit cards should be encouraged, while trade practices such as cheque discounting should be discouraged. The validity period of cheques / DDs has been reduced from 6 to 3 months w.e.f. 1st April 2012, which will discourage discounting of negotiable instruments. Payments by debit / credit cards through e-service intermediaries will simplify and encourage payments in these modes and reduce the cash economy. It is imperative that payment of wages and salaries in the private sector should also be through banking channels and become cash-less, in line with the government objective of financial inclusion.

6.23 Income Tax Department, which has a large data-base of financial transactions, should immediately set up the Directorate of Risk Management for proper data mining and risk analysis. The third-party reporting mechanism of the Income Tax Department should be made computer-driven and cover most high-value transactions in the financial sector.

6.24 Foreign remittances using corporate structures and the formal financial sector instruments may be a popular method of transferring funds (even of illegal origin) to foreign jurisdictions or for routing back to India through Foreign Institutional Investors (FII). There is a need to create a robust database of such remittances and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the transmitted funds. FIU-IND may be empowered by law to receive reports (similar to other reports submitted to FIU-IND) on all international fund-transfers through the Indian financial system. The FIUs of Australia and Canada are already mandated to receive such reports.

6.25 SEBI by a circular issued in January 2011 has introduced changes in the reporting formats that capture details of downstream issuances of PNs during the month. From March 2012, these detailed reports are to be filed on a monthly basis but have a lag of six months. Though such details would be useful in identifying suspicious transactions, the six month lag in the information available is likely to reduce the strength of corrective action that can be taken by SEBI. These regulations need to be modified to ensure that information on downstream issuances is collected for the most recent month. This would ensure active surveillance and timely intervention as and when required by SEBI. Further, the most critical feature of an effective monitoring mechanism lies in ensuring strict KYC norms. PN subscribers should be subject to KYC norms of either the home country or the host country whichever is stricter. Though such provision implicitly exists in the extant provisions, these need to be built into SEBI regulations explicitly for better compliance.

6.2 The oversight mechanism for the financial markets must have trained manpower with proper domain knowledge of financial investigation. This will involve placing officials from the financial investigative agencies in the operations / vigilance machinery of the banks and financial institutions to keep proper vigil and ensure that rules and regulations are followed in the banks and other financial institutions.

6.27 Foreign entities – banks, financial institutions, fund transfer entities, etc. – have set up businesses in India. It has been found that Indian tax residents have been having substantial monetary transactions through these entities or with their branches abroad. Some countries have implemented laws to make it obligatory to furnish information of all transactions undertaken abroad. We recommend that India may

also insist on entities operating in India to report all global transactions above a threshold limit. For this purpose, appropriate law, rules or contractual / licensing arrangement with these entities may be framed and implemented.

6.28 In India, there is no law to protect informants / whistle-blowers, nor does any department have effective witness protection program. As a result, credible information is not forthcoming and witnesses either do not turn up or turn hostile resulting in acquittals in prosecution cases. Apparently, the National Investigative Agency runs a program, and the recently created Directorate of Criminal Investigation (DCI) in the CBDT has been empowered to run such a program. Accordingly, we recommend that a witness protection law may be enacted expeditiously and witness protection program should be implemented by all law enforcement agencies.

6.29 DRI maintains constant interaction with its Customs Overseas Intelligence Network (COIN) offices to share intelligence and information through Diplomatic channels on the suspected import / export transactions to establish cases of mis-declaration, which are intricately linked with tax evasion and money laundering. The scope and reach of COIN offices should be further expanded and strengthened. Customs officers should be stationed in major trading partner countries to liaise with customs authorities of those countries and cause verifications of suspicious trade transactions.

6.30 Institutions of the Lok Pal and Lokayukta may be put in place at the earliest, in the centre and states, respectively, to expedite investigations into cases of corruption and bring the guilty to justice.

Effective Investigation & adjudication

6.31 Government must consider ways to mitigate the manpower shortage issues which are seriously hampering the functioning of various agencies particularly the CBDT and CBEC. Further, both Boards have submitted proposals for restructuring of their respective field formations. These need to be taken up and implemented on a fast track basis to show the Government's resolve to tackle the issue of black money.

6.32 Simultaneously, more administrative and financial autonomy must be expeditiously devolved on CBDT and CBEC for formulating tax policies in keeping with the overall government views on economic growth and development, for better tax administration and for providing tax-payer services as per best international practices. This has consistently been recommended by many earlier Committees[33] and Commissions on Tax Administration.

6.33 With the emergence of complex legal matrix, infraction of one law invariably leads to infraction of another. Inter-agency coordination is critical in the fight against black money. There is a need to evolve an effective coordination mechanism that identifies the laws violated, the law violators, and a permanent joint mechanism to investigate all such cases. Some developed countries have an approach of joint task force and de-confliction programs to deal with this issue, it is time we study how this approach and program functions, adapt it to Indian conditions and implement it.

6.34 The information and intelligence gathering mechanisms of various economic agencies need to be more broad-based so that the entire gamut of economic activity is captured in an electronic manner, mi and analyzed. All the agencies need to continuously get technologically upgraded in this area to effectively tackle the menace of black money. The skills of manpower resources available with the agencies also need to be upgraded continuously and exposed to the global best practices in their sphere of work.

6.35 Intelligence sharing is one of the most critical areas for effective law enforcement. For this purpose, there should be a platform for more effective sharing of intelligence / information between central and

[33] Report of the Task Force on Direct Taxes headed Dr Vijay L. Kelkar 2002; Tax Advisory Group headed by Dr. P. Shome (2001); Chelliah Committee (1991-93); Choksi Committee (1978); Wanchoo Committee (1971)

state agencies. Information exchange among various economic law enforcement / intelligence organizations should become technology driven, preferably through a common technology platform. At the same time data-security should be ensured to prevent unauthorized access to information both technologically and through access control, and periodical security audit.

6.36 For curtailing TBML, there should be institutional arrangement for examining cases of mismatch between export and corresponding import data, as done by the Data Analysis & Research for Trade Transparency System (DARTTS) of US Customs. Indian Customs should set up a Trade Transparency Unit (TTU) on these lines for which appropriate legal framework may be introduced. Existing Customs Cooperation Agreements mostly provide for mutual administrative assistance in individual cases under investigation. These agreements should have institutional arrangement for exchange of Harmonized System of Nomenclature (HSN) chapter-wise data of export and import. Similar arrangements should be made for Preferential Trade Agreements (PTA) and Free Trade Agreements (FTA).

6.37 Effective battle against black money cannot be ensured unless the judicial machinery to deal with it is specialized and the trial of offences is expeditious and punishments exemplary. The legal support to various law enforcement agencies should be enhanced. All financial offences should be tried through fast track special courts. The Ministry of Law should take up this issue on priority and make arrangements for setting up fast-track courts all over the country in a time-bound manner. Judicial officers may be provided inputs as required in technical aspects of economic offences.

6.38 Diverse activities are covered by 'primary' enactments to regulate sale receipts, actual production, charging amount in excess of statutory amounts, etc. In some cases, investigation by income tax authorities reveals infringement of state laws. In such cases, the courts admit evidence 'accepted' by state authorities. Provision may be considered for enactment in the law of evidence or the income-tax law to the effect that even if evidence is produced under the primary law, where no independent verification is made, it will not be conclusive proof for tax purposes.

6.39 Small 'entry operators' / 'bill masters' help launder large sums of money at miniscule commissions. The appellate tax bodies tend to tax their income at nominal rates. There is no effective deterrence except for taxing commission on such bogus receipts. Taxing the entry amounts in the hands of beneficiaries usually does not stand judicial scrutiny. The amendments proposed in the Finance Bill 2012 are expected to take care of the issue in the hands of the beneficiaries. Therefore, the offence of providing fake bills and entries should be dealt with firmly.

6.40 As taxation is a highly specialized subject, most reversals in court rulings are to be found in tax jurisprudence. Government may consider creating an all-India judicial service for specialized judiciary in different laws to achieve uniformity of application.

6.41 The National Tax Tribunal is yet to come into existence. Rapidly developing specialized institutions with requisite domain knowledge, to deal with complex problems confronting the country, is a priority. A professional National Tax Tribunal, with representation from the tax administration also, should be immediately formed to deal with all tax litigation.

6.42 Improvements in the matter of reporting, analysis and communication need to be achieved by further upgrading the computerization programme of the judicial system. It will enable the law enforcement agencies in taking well informed decisions.

6.43 We further recommend that for criminal trial of economic offences, the High Courts may consider setting up exclusive economic offences courts with special summary procedure. Judicial officers posted in these courts could take refresher courses in taxation laws to properly equip them in dealing with complex tax cases.

6.44 Under economic laws, different punishments are prescribed for different offences (TABLE-F1). Minimum punishments should also be prescribed for economic offences, to have greater deterrence

Different law enforcement agencies may consider lowering the punishment of 3 years to 2 years to facilitate speedier trial through summary procedure. Maximum punishments under the NDPS Act are 10 and 20 years. Under the NDPS Act, a second serious offence is punishable with death. Certainly, corruption cannot be treated as less diabolical than drug-related offences or money-laundering. Therefore, maximum punishment in serious cases of corruption should be enhanced to 10 years. Similarly, the minimum punishment for different offences of corruption should be enhanced from present 6 months, 1 year and 2 years to 1 year, 2 years and 3 years – at par with PMLA or Customs Act. Enhanced punishment, at par with other serious economic offences, is likely to provide more effective deterrence against corruption. Gist of recommendations in this regard is at **TABLE-F2**.

O[illegible] steps

6.45 Directorate of Currency (DoC) may be strengthened to introduce coins and currencies that would be machine readable, to enable routing of cash transactions through banks easy, user-friendly and reduce the menace of FICN. This will go a long way in enabling the banks to not discourage cash deposits, thus reducing cash economy. The DoC needs to be strengthened to achieve these objectives.

6.46 To prevent misuse of 'off-market', and 'Dabba-trading' or trading outside the recognized stock exchanges, amendment to Income tax law may be introduced to allow losses in off-market share transactions to be set off only against profits derived from such transactions.

6.47 As housing finance companies and the property buyers are provided fiscal incentives, it also leads to speculation and flipping transactions. To prevent this, Section 54 of the Income Tax Act should be amended to provide for availing this benefit only twice by a taxpayer in his lifetime.

6.48 The period of limitation for reopening income tax assessments should be enhanced from present six years to sixteen years for bringing to tax undisclosed assets held abroad.

6.49 One of the ways to get assets / money held abroad into the national mainstream is through a compliance scheme. The Committee is of the view that if the above recommendations are implemented properly, it would be possible to get information regarding assets held abroad as well as check the generation of black money within the country and its illicit transfer abroad. Already there are provisions in the Income Tax Act to waive prosecution and reduce penalties in genuine cases of inadvertent infraction of tax laws. Such taxpayers can always avail of the benefits under these provisions and declare any undisclosed income / assets in India or abroad.

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VII. CONCLUSION

7.1 As regards the specific mandate assigned to the Committee, the Committee is of the view that there exists legal framework to handle undisclosed assets, irrespective of the fact whether these assets are located within or outside India. In the cases where assets have been acquired by way of illegal means, a ponal offence is committed under the concerned law, and there are provisions for confiscation of such proceeds of crime, and also punishment relating thereto, under the specific law, as also under Cr PC. Any attempt to launder proceeds of crime as genuine income is a predicate offence under the PMLA and there are provisions for confiscation of assets at this stage also. The provisions of PMLA, as well as, the respective laws under which the crime has been committed also provide for suitable punishment to p trators of such offences. In this view of the matter, no purpose will be served by declaring wealth ge...rated illegally as national asset.

7.2 In respect of the assets acquired by Indian nationals / tax residents through legal means but not disclosed to the tax authorities in India, such assets / investments can be brought to tax under the provisions of the Income Tax Act provided requisite information in this regard is available with the Income Tax Department. In such cases, in addition to tax and interest charged, penalty for concealment of income is levied up to 300% of tax sought to be evaded. Prosecution for concealment of income is also launched in appropriate cases. The gross amount of tax, interest and penalty in most such cases equals, or even exceeds, the value of the asset / investment, thus resulting in realization of the entire evaded amount as tax revenue. This has the same effect as confiscation of undisclosed asset / income / proceeds of crime, and is applicable in cases of undisclosed assets / investments located both within and outside India.

7.3 Similarly, amounts held overseas unauthorizedly by any person resident in India can be effectively dealt with under FEMA.

7.4 Considering views / suggestions / recommendations from all the stakeholders, including the public, the Committee is of the view that there is no dearth of laws to deal with the menace of black money. However, some new laws, such as to regulate the cash economy, and some changes to the existing legal provisions also need consideration, as suggested by various stakeholders. There are multiple administrative agencies to deal with the problem of black money. There is, thus, no need to create any further agencies. However, the existing agencies need to be strengthened, both in terms of manpower and other resources. There is also a need for better coordination among all agencies.

7.5 The Union Budget 2012 has since been presented before the Parliament by the Hon'ble Finance Minister Shri Pranab Kumar Mukherjee on 16th March, 2012. Many of the suggestions placed before the Committee by the participating agencies have been given effect to in the Finance Bill, 2012. A summary of such proposals already brought in through the Finance Bill is at **ANNEX-G1**.

7.6 The Committee expresses its gratitude to the Chair and Members, both present and past (list of past Chair / Co-Chair / Members at **ANNEX-G2**), and their respective support teams, for giving valuable inputs in understanding various dimensions of the problem of black money and arriving at its several recommendations.

7.7 The response from the public was overwhelming, and along with industry associations such as FICCI and ASSOCHAM, contained many valuable suggestions. The Committee thanks them for their inputs, most of which find mention in this report.

7.8 The Committee also expresses its gratitude to Shri T K Shah, Chief Commissioner of Income Tax, Mumbai, for his efforts in preparing a background paper and compiling inputs from the field officers of the Income Tax department. The contribution of Investigation-I Branch and FT&TR Division of CBDT, and the FIU-IND team, to this report has been seminal.

Government of India / Ministry of Finance

Report of the Committee on Black Money, 2012

Headed by the Chairman, CBDT

Signed this 28th day of March 2012 (Chaitra 8, 1934 Saka) at New Delhi

(लक्ष्मण दास)
(Laxman Das)
Chairman

(के एम नायर)
(K M Nair)
Co-Chair

(डा. पी के सक्सेना)
(Dr P K Saxena)
Member

(आर एस सिद्धू)
(R S Sidhu)
Member

(डा. राजन कटोच)
(Dr Rajan Katoch)
Member

(बिमल जुल्का)
(Bimal Julka)
Member

(ऐस के मिश्रा)
(S K Mishra)
Member

(डा. जी नारायण राजू)
(Dr G Narayana Raju)
Member

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(P K Tiwari)
Member

(शिशिर झा)
(Shishir Jha)
Member Secretary

Part-II

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ANNEX-A

SUGGESTIONS ON CURBING GENERATION OF BLACK MONEY

Black money is generated through activities both legal and illegal. To check generation of black money through illegal activities, measures have to be taken to reduce and punish such activities. Although tax administrations have a limited role in checking illegal activities, the consumption and laundering of black money so generated, as well as generation of black money earned through legal means, can be checked and reduced by an efficient and alert tax administration. In this chapter, our recommendations touch upon both these areas.

Of commerce, corruption and crime – the three kinds of activities that generate black money, the first two are of greater immediate concern in India. The generation of black money in regular economic and commercial activities has two dimensions – generation of black money within the national economy and its consumption within the country; and generation of black money within the country and its transfer outside the country. It is to be noted that money illicitly transferred outside does not stay permanently abroad, as commonly believed, but is also brought back into the country in various forms. Black money generated out of corruption – whether in the public sector emanating from controls, licensing, contract or delivery of goods and services; or in the private sector originating from project financing, pilferage of public goods and services, bogus claims of expenses, under-reporting of production and sales, etc. – has to be dealt with differently and is strictly not within the purview of this Committee. However, through the anti-money-laundering and tax laws, generation of black money through corruption can be dealt with. While registration of an offence under the PC Act already constitutes an offence under the provisions for PMLA, there is scope for further introducing or modifying tax laws to track the illicit proceeds of corruption and make its consumption or laundering more difficult.

1.3 Some of the recommendations of the earlier committees/groups/studies/experts are as under:-

NIPFP Study Report (1985)

2.1 The report made recommendations covering four major areas, viz,

(i) changes in economic and related policies designed to reduce black income generation;
(ii) policies designed to promote integrity and improve honesty among at least senior tax officials and those dealing with controls;
(iii) measures designed to bring down the amount of black wealth currently held; and
(iv) policies relating to administration and enforcement of taxes, prosecution of tax offenders and imposition of penalties for economic crimes.

2.2 Among changes in economic policies, the Study recommended reduction in tax rates and simplification of the tax structure; reduction in the complexity and number of controls through de-regulation, decontrol and dependence on pricing mechanism; and proper financing of election expenses. To improve public administration, the Study recommended implementing a system of rewards for hard-work and honesty and punishment for dishonesty and negligence, along with better remuneration for public servants. Towards measures to bring down black wealth currently held, a National Fund for socially relevant projects such as slum-improvement and a voluntary disclosure scheme with immunity from prosecution were recommended. To improve tax administration, introduction of modern technology, increasing strength of the tax department and better training for its officials were recommended. For better enforcement of tax laws and prosecution of tax offenders, the recommendations made included reduction in number of scrutinizes and searches; increase in number of surveys; quick disposal of assessments, imposition of penalties and launching of prosecution in search cases; amendments to Chapter-XXA to make it more effective in dealing with generation of black money in immovable property transactions; shifting the initial burden of proof on the tax evader; and setting up special courts to try tax and other economic offences with special and speedier trials.

Suraj B Gupta 'Black Income in India' (1992)

2.3 In his study published by Sage as above, Mr Suraj Gupta criticized the earlier measures undertaken by the government from time to time to unearth black money, viz. VDI Schemes 1951, 1965, 1975 and 1985; SBB Scheme 1981; and demonetization of currency in 1946 and 1978; and also touched upon the schemes launched by the government during 1991-92. His critique of improper implementation of statutory tax provisions; ineffective surveys, search and seizures; imposition of few penalties and rare prosecutions due to legal interpretations and delays; appear to indicate that dealing with the menace of black money was more an implementation issue.

Arun Kumar 'The Black Economy in India' (1999)

2.4 In his study published by Penguin as above, while Mr Arun Kumar did criticize as failures the following measures undertaken from time to time to tackle black money – (a) voluntary disclosure schemes; (b) demonetization in the year 1978; and (c) lowering of tax rates; he recommended better regulation of real estate and financial markets, right to information, as well as political and judicial reforms to reduce the need to generate and curb black wealth.

Vijay Kelkar Task Force (2003)

2.5 According to the Kelkar Task Force (KTF), the fundamental role of tax administration is, to render quality taxpayer services to encourage voluntary compliance of tax laws, and to detect and penalise non-compliance. Recommending introduction of best international practices in the area of taxpayer services for widening the tax base through voluntary compliance, most of the measures recommended by KTF are under various stages of implementation or stand implemented (**TABLE-H1**). In the area of personal and corporate taxation, KTF had made a number of recommendations with a view to reduce the tax slabs, deductions and exemptions. Most of these recommendations have also been either implemented or are in the process of implementation, primarily through the Direct Taxes Code Bill 2010 (**TABLE-H2**).

INCOME TAX DEPARTMENT

Real Estate

3.1 Real estate is one the biggest source and mode of consumption of black money. There are no provisions in the Act to effectively counter this menace. The valuation adopted by stamp authorities is in most cases completely out of line with the prevailing market value and the provisions of Section 50C, introduced by the Finance Act, 2002 (w.e.f. 1.4.2003), mandates that the stamp value is to be taken as the value of sale consideration of property. In several cases, transactions for transfer of property are arranged in such a way that there is no registration before the Stamp Valuation Authority as on the date of transfer. In such cases, provisions of Section 50C cannot be invoked. In fact, black money used in purchases is entirely outside the scheme *u/s* 50C.

3.2 Earlier Chapter XX-C of the Income Tax Act, 1961 provided for presumptive purchase by the Central Government, in cases where properties were grossly undervalued. However, the Chapter ceased to apply on and after 1st July, 2002. Mostly, the stamp duty rates are fixed in an extremely general manner. The present arrangement is therefore not satisfactory in curbing both the generation and utilization of black money. Suitable methodology and appropriate authority needs to be created for fixing the rates of the property of particular areas and periodically revaluation of the same keeping in view the market conditions. The earlier system of the government buying such land at the agreed consideration plus a reasonable profit could be brought back with improvements. It may be worthwhile to create a new Directorate for this purpose, as an Acquisition Wing of the Income Tax Department.

3.3 Acquisition of land by cash payment has the consequence of facilitating routing of black incomes and as farmers move elsewhere, chargeability of capital gains on sellers, i.e. farmers, cannot be enforced. Section 194LA, providing for tax deduction at 10% of the consideration paid enabled monitoring of such transactions. This has encouraged large cash payments to farmers. The provision was not made applicable to agricultural land. It would be in the interest of farmers if they received payment through bank instruments, as savings in banks would be safer than handling cash before transferring it to a bank.

3.4 With the continuous rise in prices along with fiscal benefits on residential properties, high-net worth individuals are motivated not by a need to build properties but invest in properties, only with a view to transferring them and encashing the 'gain' as capital gain. As housing finance and the property buyers are provided fiscal incentives, provisions like Section 54, 54EA and 54F of the Income Tax Act need to be amended to extend the holding period to five years, to reduce 'flipping' of properties, and thereby speculation.

3.5 Often, properties are owned by public limited companies in which public are not substantially interested. These are generally old properties, whose value has appreciated manifold over years but, the book value of the property is shown at the original market price, a pittance compared to its market value as on date. In such cases, properties are transferred through transfer of shares of the companies owning t . Since, the book value of the property is very low, the purchaser only pays for the shares of the company by cheque and the remaining part of the consideration in respect of property transfer, is paid as per current market value, in cash. It is suggested that IT Dept bring in appropriate legislative changes to curb use of black money in such transactions:

(a) When 25% shares of a company, in which public are not interested, are transferred in a financial year, the total assets of the company must be revalued as per circle rate/rate adopted by the 'Registration Authority'. Artefacts, antiques, paintings must also be revalued by authorized valuer.

(b) Shares of the subsidiary company will also be required to be re-valued in such cases, as per the method mentioned above.

(c) The capital gains arising taking the book value as sale consideration should be taxed in the hands of the seller.

(d) Stamp duty should also be charged treating such transfer of share as transfer of property.

3.6 Immovable properties of substantial worth are sometimes being transferred indirectly, by way of transfer of shares/stake of the company/concern, which is the owner of property. Such transactions result in evasion of Capital Gains tax and also avoidance of substantial amount of Stamp duty. There should be specific provision in Income tax Act to ascertain the market value of shares of company, based on the prevailing market price of the properties held by the company.

3.7 The clause (iii) of Section 2(14) gives definition of agricultural land for capital gains purposes and as per the existing definition, lands situated beyond 8 Kms from local limits of the municipal area are excluded from the ambit of capital gains. In view of the rapid urbanisation, urban limit should be extended from existing 8 Kms of municipal area and sale of agricultural land to a non-agriculturist or for non-agricultural use should be subject to tax mandatorily.

Bullion & Jewellery

3.8 India is one of the largest importers and consumer of gold in the world and its demand per annum is around 850 metric tonnes. Of late it is seen that investment of black money in bullion has increased, leading to spurt in bullion prices. The Government may consider introducing inflation-linked bonds to reduce the attraction of gold/silver as savings investment. It may also consider revising custom du as also wealth tax on gold and jewellery, to discourage such purchases by households. To curb su ncidences, the following legislative changes may be considered:

(a) Import duty on purchase of gold should be increased from $ 200 per 10 gm to 5% of total cost and exporter of jewellery should get import benefit on export of jewellery.

(b) All transactions in bullion of more than one lakh should be by Account Payee Cheque only.

(c) If any unexplained bullion/jewellery is found during the course of search, mandatory penalty @ 300% u/s 271(1)(c) should be imposable.

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Capital Markets

3.9 Long term capital gain on sale of certain financial assets is subject to no or nominal tax. This provides an opportunity to launder money as sale proceeds of such assets by paying no or minimal tax. The rate of tax for capital gain and income from business should be uniform to reduce the element of tax arbitrage.

3.10 There is a common modus operandi adopted by many private companies for introduction of black money, i.e. by way of share application money, share capital or unsecured loan. The idle share application money is just like unsecured loan but without interest. Suitable amendment to the Income Tax Act may be introduced to impose presumptive tax on the total amount of money collected by way share application money if they are not allotted within a certain time period or refunded. This will stop the tendency to introduce unaccounted money through this method.

3.11 Promoters of listed companies adopt dubious methods to jack up prices of shares which are then off-loaded. Later, as prices crash shares are re-purchased at lower value by them or through controlled shell entities. This cycle goes on and provides opportunities for purchase of losses and set off incomes/ gains. As per Section 10(38) of Income Tax Act, income arising from the transfer of a long-term capital asset, being an equity share in a company is exempt. This provision needs to be reviewed. The exemption should be given up to a certain limit to give benefit to small investors.

3.12 A large portion of the black money which goes out of the country is believed to come back as investment in Indian businesses from tax havens in the form of share capital/share premium/share application money from the local market, or as Foreign Direct Investment (FDI) or as investment by Foreign Institutional Investors (FIIs) or Participatory Notes (PNs). As per the existing provisions of Income Tax Act and court rulings, it is not possible to examine the source of source or to reach the tail end of such introduction of unaccounted income. Enquiries into the source in such cases are not possible because there is complex multi-layering or layering is done through entities registered in other countries. Layering transactions to conceal the reality or to hide the ownership should not be permitted and FIIs should not remain faceless entities. In such cases, where there is a suspicion about the genuineness of transactions, there should be provisions in law to treat it as income of the beneficiary unless commercial expediency of the layered transaction is explained. Onus should be on the beneficiary in such cases.

3.13 In case of share application money lying idle for a certain period of time, there should be a provision for taxing the same at some particular rate because the beneficial company is getting capital without paying any interest for that period. Empirical knowledge shows that such kind of capital introduction is generally a method of routing unaccounted money. There is urgent need for legislation so that assessing authorities can go beyond source of the source of such sham transactions, in order to reach the tail end, because due to the certain judicial pronouncements it has become difficult to do so at present. Onus of proving the genuineness of share capital introduction by a company should lie on the company itself. Mere submission of name and address of the share-holders should not absolve them from this onus. The company management should know the identity of the share-holders, and KYC norms should be imposed in the capital market as in the banking sector.

3.14 All tax treaties should have the articles on exchange of information. In cases where we don't have DTAAs, we should go for Tax Information Exchange Agreements (TIEAs). Tax havens which refuse to sign TIEAs with us should be notified as 'non-co-operative jurisdiction' and suitably tackled at international forums. Further, suitable mechanisms should be developed to deal with remittances from/to such tax havens. An effective deterrence could be TDS on such remittances irrespective of their nature if they are coming from a non-co-operative jurisdiction. Only when we have such institutional arrangement for information exchange can we effectively curb the flight of black money. In case of outward foreign remittances exceeding a particular amount, a mechanism should be developed to ensure proper monitoring. For this purpose the TDS mechanism should be geared up. The return form should be amended to make it mandatory for taxpayers to make specific declaration about bank accounts in foreign countries.

3.15 It is a well-known fact that huge amount of black money is re-routed in the books in the form of Long Term Capital Gains arising from share transactions, which is exempt from tax. It is high time that exemption provided in the Act on such transactions is removed. If at all any concession has to be given, then LTCG should at least be taxed at a concessional rate.

Non-Profit Sector

3.16 The definition of "charitable purpose" u/s 2(15) of the Income Tax Act, 1961 is widely being misused by the so called educational societies running the educational institutions on purely commercial basis. Such societies after getting registered under section 11 or 12, or section 10(23C) of the Income Tax Act, 1961 avail 100% exemption from tax, although there is nothing charitable in their activities. Tax scrutiny of such institutions does not yield any worthwhile results. Therefore, there is an urgent need to curb proliferation of such education business by making necessary amendments in the definition of charitable purpose u/s 2(15) of the Income Tax Act, 1961. There is an urgent need to amend Sections 2(15) for the definition of 'Charitable Institution' with clarity. Section 10(23C), Section 11 and Section 12 also need to be amended so that such institutions do not get blanket permit for generation of unaccounted money. The provision of certain rate of tax or flat rate of tax on gross turnover or profits has been introduced in the Direct Taxes Code Bill. However, respective regulators also have responsibility to ensure discipline in the matter.

Tax Free Zones

3.17 Tax free zones or tax holidays have been created in the various states, viz. Himachal Pradesh and J&K in the North. In some cases, it has been found that the deductions u/s 80IA/80IB of the Income Tax Act being claimed by the Industrial Units are bogus. Mostly Industrial Units allegedly operating from these zones are actually not operating, and if they operate they show higher profits during the years of entitlement for claiming deductions under Income Tax Act, which is not commensurate with trade results in similar lines of business outside such zones. Soon after the tax free period is over, the same business shows sharp drop in returns. From the field experience, it has been established that such zones are merely conduit to channelize unaccounted profits of other regions without paying any tax on the same. Suitable amendments are required in the income tax and other related laws to plug this loop hole. The plethora of exemptions and deductions in the Income Tax Act also need a revisit. The profit linked deductions are prone to misuse as they encourage diversion of income from taxable activities to such activities where deduction from income is available. A beginning has already been made by introducing investment linked deductions in the Direct Taxes Code Bill.

Agricultural Income

3.18 Similarly, the transactions relating to agricultural activities and forest produce are allowed to be done in cash keeping in view the interest of the farmers and the growers. In the garb of these benefits, persons having very little or unproductive land holdings procure false bills from Commission Agents of grains, fruits, vegetables and forest produce, to have exempted agricultural income. Instances have also come to the notice that small farmers having their own agricultural holding of even less than five acres, claim to be doing agricultural activities on land holdings of 50 acres or more under the garb of lease holdings. By doing this exercise, they facilitate the lessor to adjust his black money and also create disproportionate agricultural income in his own hands. So in a way for some piece of agricultural land, both the lessor and the lessee claims the agricultural income quite disproportionately.

3.19 To curb this tendency, the Agricultural Department of every State, who are considered to be the specialist in the field, after making the necessary studies on the yield and market rates, should work out mechanism to notify at least the average yield of the produce of the respective crop for the specific area. This notification should be published at the beginning of every financial year, which can be modified keeping in view other natural factors. Such yield rates should be considered in the case of the assessees who are showing agricultural income beyond a certain limit of agricultural holdings. Such notification should be legally binding on assessing authorities as well as appellate authorities.

3.20 Many taxpayers use the income tax exemption for agricultural income to bring back tax evaded money into the economic mainstream. While per se this may be productive economically, and agricultural income is also considered for rate purposes while computing income tax liability, ways to tax such amounts, or preventing misuse of these provisions by unscrupulous taxpayers, need to be considered.

Corporate Law

3.21 In India, there are over 6 lakh companies, of which a miniscule number contribute to tax. The remaining companies created are either not profit making or dormant. Such private limited companies use the route of share capital with share premium for the introduction of black money. The modus-operandi is to issue capital with partly convertible shares at huge premium. These investment companies are companies in which cash has been introduced after layering through a number of entities to make detection of the cash source difficult. The premium charged is shorn of commercial reality or basis. After bringing its 'own' capital through partly convertible shares with huge premium, the company usually buys backs all shares at nominal value, thus laundering black money in a prima-facie legal manner.

3.22 Companies with low equity, but having high debtors and creditors without any immovable assets, should be captured in databases, as should be companies which have changed their registered offices frequently in a span of few years. Similarly companies charging premium but not in fact ever allotting shares should create suspicion. The raising of red flags should result in verification and/or investigation of such companies. Ministry of Corporate Affairs should also give serious concern to data mining and intelligence extraction, if companies are to play their due and important role in any growing economy.

3.23 Charging share–premium should be restricted to companies with large paid-up capital – say exceeding Rs.25 crores, and not for small companies where such provision is prone to misuse.

3.24 In many cases, it has been observed that unaccounted income of business groups are brought back into the regular books in the form of share application, share capital and share premium, through bogus investment companies popularly known as 'jama-kharchi' companies. After the decision of the Supreme Court in the case[1] of Lovely Export, taxation of such bogus share capital has become almost impossible. It is imperative to bring necessary amendments in the Act, treating such receipt of share capital and share premium at par with cash credits with onus on the assessee of proving the creditworthiness, genuineness and identity of the share holder. In case of corporate assesses the identity should be deemed to be not established if the directors are not traceable on the address given. Such legislation will go a long way in curbing ploughing back of black money.

Expanding Banking Operation

3.25 With high liquidity and its ramifications for inflation, the re-introduction of BCTT may also be considered. The advantages of re-introduction would be two-fold. Firstly, it would discourage cash withdrawals and therefore use of cash, and secondly, large cash transfers could be monitored.

Corruption

3.26 Those holding public office declare their assets before election. There is no requirement (except in income tax returns) to reflect their assets when they demit office. Such a requirement should be mandatory as such information would be accessible under the RTI Act. Politically exposed persons (PEPs), before they take their pension entitlements, could be subjected to scrutiny with respect to accretions in wealth assets.

3.27 The Canadian legislation relating to anti-money laundering law applies to proceeds "obtained or derived directly *or indirectly* as a result of ... an act or omission *anywhere* that, if it had been acquired in Canada would have constituted" an offence under Canadian law. This aspect needs to be incorporated

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[1] CIT vs. Lovely Exports (P) Ltd. (2008) 6 DTR 308 (SC)

in the Indian law through Prevention of Money Laundering Act (PMLA) – so that illegal proceeds generated not only domestically but also internationally are covered. Such illicit flow of funds to the developed countries from the developing countries can be substantially reduced.

Introducing Beneficial Ownership Concept

3.28 The concept of beneficial ownership as introduced in the PMLA may also be incorporated in the Income Tax Act while dealing with the provisions of bogus share capital. It is defined as under

> "beneficial owner shall mean the natural person who ultimately owns or controls a client and/or the persons on whose behalf a transaction is being conducted, and includes a person who exercises ultimate effective control over a juridical person"

Fake Transfers Abroad

3.29 There must be a specific column in the return of income asking the assessee to state whether he holds any off-shore bank account or assets and if so, there should be a reporting requirement of the details thereof. Necessary amendments in the Income Tax Rules and the Income Tax Return Forms may be made. This must be accompanied by specific harsh penal provisions and prosecution under criminal law for furnishing incorrect information. This would act as a deterrent to assessees who hold undisclosed off shore accounts/assets

3.30 It is also known that money stashed abroad is generally kept in certain overseas branches of foreign banks who refuse to give information even after being provided with full-fledged information of such bank accounts. Enforcement agencies in India should be empowered to issue subpoena to the Indian Branches to cull out the information available in consultation with RBI with its foreign counterpart. The RBI may frame rules wherein the Indian Branch is given a business disincentive as the closure of business if the said information is not provided by the Indian Branch.

3.31 It is also suggested that in some of the DTAAs where there is much emphasis on Secrecy Clause, the treaties may be renegotiated on the lines of OECD Model Tax Convention Article 26. A new Clause should be inserted in the treaties by signing Protocols prohibiting the country from withholding of information on the ground/ pretext that the said information is not needed by their Tax Departments or their domestic law prevents the FIIs or banks to pass on such information. If such an amendment is brought then the contracting countries will not have any ground to refuse information. This practice is now being adopted by all the developed countries and tax havens are being pressurised to give information.

Foreign Remittances

3.32 Over-invoicing and under-invoicing of imports and exports is a regular phenomena, and the difference in prices of goods and services are settled through Hawala route or by adjustments. While the transfer pricing regulations check such transactions between associated enterprises, they have no role in cases of transactions between unrelated transacting entities. Therefore, stricter laws need to be implemented so that such operators should be punished expeditiously.

3.33 Use of the Mauritius route and other tax havens, as channel for avoiding payment of taxes in India, with the help of loopholes in bilateral agreements on double taxation, may be stopped by bringing in appropriate legislative changes either in the Act or in the respective DTAAs. Suggestions to strengthen this could be the following:

(a) Withdraw or amend Circulars No. 682 and 789 issued by the CBDT.
(b) Make round tripping clause in the DTAAs with stringent non applicability of treaty benefits, or necessary changes be brought in the law.
(c) Strengthen the laws for monitoring of investments in/from India into a zero/low tax countries.

3.34 Replacement of laws treating economic crime as criminal offence instead of civil offence under FEMA. There is room for thought to consider whether some concept of criminality *mens rea* under FEMA has to be brought back especially in repetitive offences, offences involving securities markets, etc.

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3.35 Share market is one of the sectors where ill-gotten money sourced abroad is brought back through transactions from tax havens or low tax jurisdictions. Unfortunately, the KYC norms are not fully and really extended to the FIIs, their sub-accounts, their Participatory Notes ('PNs') and other non-resident investors. Presently, the mere fact that they are registered with some Regulatory authority in any country shields them from the further investigations by the Indian agency. This soft glove treatment should be stopped and SEBI as well as Income Tax Department and Enforcement Directorate should be empowered to ask for the actual identification of these investors' sub-accounts and PNs etc.

Law & Procedures

3.36 The Law Commission should be entrusted to suggest ways, including legal enactments, which c[illegible]l provide for harmonizing various proceedings under different financial laws. This would include p[illegible]adures to formalise setting up teams, where investigation officers from different departments, even ministries, could be formed for any enquiry. The main and basic offence should determine the nodal Ministry/Department to provide the team leader, who in turn would have members of the team from all other departments/ministries till such investigation is complete. This is a practice followed in the U.S., which too has a federal structure, but has an effective, workable system, without which there can be no effective deterrence.

3.37 Under Section 131 of the Income Tax Act, there is a requirement of nexus between the documents called for and the proceedings pending, and the I-T authorities cannot make roving enquiries. Action for false statement under oath cannot be taken under IPC. Under the CPC, a warrant of arrest may be obtained for production of the witness to the court or else prosecution proceedings can be initiated under section 174 of the IPC for failure to respond to summons. Failure to comply to a summons can also entail a search under section 132 of the Income Tax Act. However, launching prosecution is a cumbersome process. As time is of great essence in investigation of a tax evasion case, it is not possible to conduct a search in every case of non-compliance. Section 272A(1)(c) of the Income Tax Act prescribes a penalty for non-compliance to summons under section 131 of Rs.10,000 for each such default which is hardly a deterrent. Therefore, provisions akin to CPC/IPC need to be incorporated in the Income tax law to enforce attendance of witnesses. The quantum of penalty imposable under section 272A(1)(c) also needs to be enhanced to have effective deterrence.

3.38 At present, Income tax authority is empowered to carry out survey u/s 133A of the Income Tax Act only in a premise at which a business or profession is carried on. Therefore, an institution or trust, apparently having charitable object, cannot be covered under section 133A. However, in many cases, charitable institutions are being run on commercial lines for generating profits, though the declared objectives of the institutions are stated to be charitable in nature. This impediment should be removed.

3.39 There is no power to call for witness during survey, if the assessee is uncooperative. The words 'on oath' should be inserted after the words 'record the statement of any person' in the wording of Section 133A (3)(iii) so as to preclude the possibility of retraction at a later stage. Provisions on the lines of Section 132(4A) should also be introduced in Section 133A, so as to create presumption of ownership as regards books of accounts, etc., found in the course of survey.

3.[illegible] No power is vested in Directors of Income Tax (Investigation) to grant sanction for prosecution for [illegible]ences that occur in connection with the work area related to the Investigation Directorate i.e. under sections 275A, 275B, 277A and 278 of the Income Tax Act, 1961. This should be introduced in the Income Tax Act.

3.41 Penalties that are not related to assessment, such as for failure to maintain books/get accounts audited, etc., the penalty amount is too low to act as an effective deterrent. For instance, penalty under section 271A for failure to keep, maintain or retain books of account, documents, etc. is ₹25,000 which will hardly act as an effective deterrent.

3.42 There is no provision under the income tax law to determine whether any income/asset are from legal or illegal means. This should be introduced in the law and stringent taxes and penalties imposed for illegal income/wealth. Maximum marginal rate can be enhanced for charging undisclosed incomes.

3.43 Though there are rules for arriving at arm's length price (ALP) in the case of international transactions with related entities, there are no such rules for arriving at ALP in transactions with unrelated entities whether within the country or outside, which should also be considered.

3.44 There is no power of contempt or grant of summary punishment for false evidence, or enforcing attendance of witnesses or committing a person to give evidence or produce books/documents. For effective criminal investigation against tax evaders, provisions akin to Chapter-XXVI of Cr PC need to be introduced in the Income Tax law.

3.45 The Forms No. 60/61 and Form 15G/15H should be suitably modified so as to also capture the fields such as "Date of Birth", "Date of Incorporation" and "Father's Name" for population of valid PAN in non-PAN data collected by CIB units. Obtaining copy of KYC documents should be made mandatory.

DIRECTORATE OF REVENUE INTELLIGENCE

4.1 For execution of the provisions of forfeiture of properties under the customs and narcotics laws, the difficulties faced are mainly identifying the property, identification of relatives/associates in whose name the property is acquired, lack of co-ordination between different agencies, shortage of resources/manpower, paucity of time, etc. Until all revenue records indicating the ownership of any property are computerized/connected all over India through a server, it is an tedious job to identify property owned by an offender particularly when it is at a place, other than the city of his residence.

4.2 Bilateral agreements or the International Convention on Mutual Administrative Assistance for the Prevention and Repression of Customs offences (CMAAs)

The role of international cooperation in effective Customs enforcement can hardly be over emphasized. India has signed bilateral cooperation agreements/ Memoranda of Understandings with 20 countries (which include EU and SAARC Blocks). This arrangement helps the Customs Department in gathering information and investigative assistance relating to Customs offences which have direct linkages with the generation of black money. Although the experience, so far, in this regard has generally been positive, successful partnership depends on interest and the willingness of the partner country and also their domestic privacy laws and other legal provisions. However, the world over there is an increasing desire for mutual cooperation and sharing of information. CMAAs are very effective in checking invoice manipulation and other trade malpractices. Strengthening and expansion of CMAAs will be highly beneficial to the cause of curbing the menace of black money generation and its movement across international Borders. It would be useful if the scope of such agreements is expanded and such agreements are concluded with a larger number of countries. India has also made a proposal in the W.T.O. at Geneva for a multilateral agreement for such exchange of information.

4.3 The Central Government has provided for schemes envisaging incentive in respect of Central Excise duty to units located in North East States, H.P, Uttarakhand and J&K. This scheme is being operated by way of exemption from central excise duty to units manufacturing goods in H.P and Uttarakhand. However, in the case of North East and J&K, this scheme is being operated by way of refund of central excise duty paid in cash on finished goods. The refund scheme provides double benefit in view of the fact that the buyer of the goods gets CENVAT credit also and further it is prone to misuse in the following manner:

a) Over production is shown in order to get more refund of excise duty and clandestinely removed goods, on which no central excise duties have been paid, are regularized and find their way into the mainstream without payment of any taxes and at the same time Input credit is availed using invoices of units located in these States.

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b) In most of the cases inputs are shown procured from traders to avoid credit of the CENVAT to maximize the refund and this modus operandi also facilitates diversion of inputs to other units located in tax zones (particularly to SSI units).

Accordingly, it is proposed that exemption from Central excise duty may be provided to units located in J&K and the North East (similar to H.P and Uttarakhand) and refund scheme may be done away with.

4.4 A detailed 'Risk Management System' (RMS) has been put in place to facilitate the import clearance of reputed clients and low risk consignments. In the face of ever increasing global trade and growing volume of import cargo, RMS ensures better utilization of existing resources to deal more effectively with suspected/targeted cases of misdeclaration and non-compliance. Regular examination of medium and high risk consignments is done to rule out misdeclaration. Moreover, there are various enforcement agencies at different levels to detect cases of misdeclaration. Every year, thousands of cases of undervaluation and misdeclaration are detected at different levels and the importers are appropriately penalized and are made to pay the correct amount of import duties along with interest if any. Search, summons, seizure and arrest provisions have been provided in the Customs Act, 1962 to deal with cases of undervaluation and misdeclaration as criminal offences. Depending on the magnitude of the case, penal provisions including imprisonment already exist in the Act ibid. However, Hon'ble Supreme Court in September, 2011 has declared that offences under the Customs Act are non-cognizable and bailable, which is posing legal problems in investigation of the cases by Customs Preventive formations including DRI. A suitable amendment may be carried out in the provisions of the Customs Act to declare the offences under the Customs Act as cognizable and offences under section 135 of the said Act may be made non- bailable.

4.5 In some cases, it has been noticed that foreign remittances against exports are received from third parties who are other than the consignees and are not related to either buyer or consignees. This provides for a mechanism where goods are consigned to and cleared at a place at some declared value whereas highly inflated payments for the said transaction is routed through another entity situated somewhere else. The use of this mechanism facilitates the illegal cycle of flow of funds for the purpose of export benefits only. Accordingly, the banking system should be advised to curb the misuse of banking provisions by employment of the aforesaid modus operandi. Proper verification of foreign remittances may be done by banks and bank realization certificates for realization of export proceeds may be issued only thereafter in cases of remittance received from third parties. This will help in curbing the illegal inflow of black money as well as the burden on the exchequer on account of undue export incentives.

4.6 Section 142 of the Customs Act, 1962 provides for recovery of dues from sale of goods under Customs control or movable/immovable property of the person from whom the amount is to be recovered. However, it does not provide for recovery of sale proceeds of smuggled goods. The section should be amended to provide for recovery of sale proceeds of smuggled goods i.e black money generated/ transferred in international trade.

4.7 Section 28BA of the Customs Act, 1962 provides for provisional attachment of properties where show-cause notice (SCN) has been issued u/s 28(1). However, it does not provide for such provisional attachment in cases of SCN issued u/s 28 (4) or other circumstances like drawback fraud. The section should be amended to provide for provisional attachment of property in respect of SCN issued u/s 28(4) and in other cases such as duty drawback fraud to protect the interest of revenue.

4.8 Existing provision under the Customs Act, 1962 provides for punishment by way of imprisonment up to 7 years for smuggling of FICN. However, the very nature of this illegal activity makes it highly dangerous to any economy in particular and to the world trade in general. Stringent laws, including enhancing the length of punishment from 7 years under the existing laws, should be incorporated to deal with FICN more effectively.

DIRECTORATE OF CURRENCY

5.1 The Government had constituted two Committees for suggesting reforms in those two areas, which are more prone to corruption and generate a significant amount of black money. Both the Committees have already submitted their reports to the Government and this committee suggests that decisions must be taken urgently in a time bound manner to plug the known source of generation in black money. The Reports are summarised as under:

A. REPORT OF THE COMMITTEE ON PUBLIC PROCUREMENT:

A.1 Corruption in public procurement and contracting is an important source of generating black mr y. The government and its agencies incur huge amount of public funds on the procurement of gc and services for various welfare programmes and also for their own use. It is fact that the public procurement is a necessary and all pervasive activity within Government and its organisations, stretching across the breadth and depth of the Government structure. However, efficiency and probity in public procurement, on the one hand, determines the efficacy of the utilization of public funds and on the other hand, it affects the public perception of the credibility of public procurement in particular and the level of governance in general.

A.2 The view has long been held that there is need to undertake systemic and procedural improvements in this area. The recent revelations of mal-practices in high profile procurements have only brought out the urgency of need to reform in this area. Therefore, the Government had constituted a Committee on Public Procurement under the Chairmanship of Shri Vinod Dhall to suggest a comprehensive procurement policy to reform public procurement. The Committee looked into various issues having an impact on public procurement policy, standards and procedures.

A.3 The recommendations of the Vinod Dhall Committee are aimed at bringing efficiency, transparency and accountability in the public procurement. The Committee has proposed basic reforms in the whole area of public procurement, including the legal and regulatory framework, the institutional structure, the deployment of modern technology in aid of public procurement, as well as overhaul of certain specific prevailing practices. The emphasis is on transparency and putting maximum information in public domain i.e., public procurement legislation and an overarching e-portal (public procurement portal) that acts as a one-stop shop for tendering, bidding and payments of earnest money.

A.4 The last CoS meeting on this subject was held on 8.8.2011. It was observed in this meeting that a statement laying down the over-arching policy on procurement may be issued and work on drafting a law may be taken up. Department of Economic Affairs had also agreed to go for a separate law on public procurement. Accordingly Department of Expenditure vide their OM No. 2/3/2011-PPC dated 2nd December 2011 have circulated the Draft Public Procurement Bill for inter-ministerial consultations. It is therefore necessary that steps are taken in a time bound manner to help in bringing to an end this important source of generating black money.

B. COMMITTEE ON ALLOCATION OF NATURAL RESOURCES:

B.1 Another significant source of generating black money is the alleged discretionary and non-trar rent allocation of natural resources. Therefore, a Committee on Allocation of Natural Resources (CA .) was constituted by the Government under the chairmanship of Mr. Ashok Chawla, former Finance Secretary, inter-alia to deliberate on issues of enhancing transparency, effectiveness and sustainability in utilization of natural resources, consistent with the needs of the country to achieve accelerated economic development.

B.2 The committee identified natural resources such as coal, minerals, petroleum, natural gas, spectrum, forests, water and land, wherein the Union Government had a major role to play in articulating the policy framework or otherwise influencing the manner of their allocation. The important recommendations of the CANR relate to, among other things, standardising the format of minutes for all

Standing Linkage Committee (Long-Term) meetings, particularly for meetings where allocation decisions are made. It has also proposed that Mines and Minerals (Development and Regulation) [MMDR] Bill, 2011 which has been drafted to replace the existing MMDR Act, 1957 may accommodate a variety of allocation mechanisms – both for areas of known and unknown mineralization – provided they are open, transparent and competitive.

B.2 The committee mainly recommended that the Government should put in place transparent market-based mechanisms in the allocation and utilisation of natural resources. The Committee has also recommended that while it is important for market processes to be used wherever relevant and feasible, the capacity for oversight is an integral component of an institutional architecture that ensures transparent, efficient and sustainable allocation and use of natural resources.

The GoM in its sixth meeting dated 30th September 2011 considered the recommendations of CoS dated 29th September 2011. After detailed deliberations, most of the recommendations of the CANR were accepted as proposed by the Committee. DEA was asked to prepare a policy paper with regard to transfer or alienation of land held by Government and Government controlled statutory authorities, and take further necessary steps to bring it to the Cabinet for final approval urgently. These steps shall ensure monitoring over leakages from the system in form of black money and will also bring more revenue to the Government.

5.2 Ratification of Palermo Convention: The ratification of Palermo Convention will help in getting cooperation from foreign jurisdiction on the basis of this multi-lateral treaty (i.e. Palermo), in those cases wherein India doesn't not have Mutual Legal Assistance Treaty on criminal matters. The scope of cooperation shall include both of collection of evidence and causing confiscation of assets linked to Scheduled Offence in India.

5.3 Implementation of recommendations of Committee on Beneficial Ownership. This will help in identifying the beneficial owners of the legal entities

5.4 Signing of MOU by RBI with Chinese Banks, and others, will open another channel of accessing information of a customer of foreign bank, which is of interest to India.

5.5 Directorate of Currency needs to overcome the issue of counterfeiting and ensure that coins and currencies are machine readable, which will make the routing of cash transactions through banks more easy, user-friendly and attractive. The DoC needs to be strengthened to achieve these objectives. This will go a long way in eliminating cash transactions, which are conduit for black money.

FINANCIAL INTELLIGENCE UNIT (FIU-IND)

6.1 The issue of black money is complex and has many facets that must be analyzed before adopting a prescriptive approach. There should be a commonly agreed definition, the causative factors, the modus operandi for generation, concealment and transaction of black money, in order to evolve a comprehensive and integrated regime to combat black money. Subject to this, some general suggestions that could help mitigate the problem of black money are as follows:

A. Equal focus on black money in India and that in foreign countries:

6.2 A lot of attention has recently been given to black money transferred abroad. Any policy on re. ..ry of black money should give equal, if not more, importance to the fact that large amounts of black money are circulating within the country. The recovery of the domestic component of black money is relatively easier compared to retrieval of black money stashed in foreign jurisdictions, which requires co-operation from other sovereign countries having their own legal system and procedures. Effective handling of the issue domestically can produce tangible results with comparatively less efforts and resources.

B. Effective mechanism to track benami assets:

6.3 The Benami Transactions Prohibition Act has not yet come to force despite having been passed

in 1988. In view of the fact that benami assets are an important means of investing black money, the operationalization of the Act should be facilitated, with appropriate changes, if necessary, to make it relevant under the current socio-economic situation.

C. Effective mechanism to track and confiscate proceeds of crime:

6.4 The effectiveness of the existing legal and executive framework to detect and confiscate incomes and assets of criminal origin should be reviewed and enhanced. Speedier investigation and prosecution to effect confiscation and forfeiture of proceeds of crime appear feasible in view of the fact that under PMLA, the burden of proving that the proceeds of crime are untainted property is on the accused.

D. Tax-related offences as predicate to money laundering:

6.5 An international debate is underway on the desirability and feasibility of making tax offences as predicate offences under the anti-money laundering legislation. Certain countries like the United Kingdom and Germany already treat tax offences as predicate offences under their anti-money laundering legislations. India could consider aligning its policies on this issue with the standards that would emerge from the deliberations of the Financial Action Task Force (FATF).

E. Reporting of foreign remittances:

6.6 Foreign remittances using corporate structures and the formal financial sector infrastructure could possibly be a popular method of transferring funds (even of illegal origin) to foreign jurisdictions or even for routing back to India through Foreign Institutional Investment (FII). There is a need to create a robust database of such remittances and carry out an analysis of their backward and forward linkages in order to understand the nature and legitimacy of the funds transmitted. FIU-IND may be empowered by law to receive reports (similar to other reports submitted to FIU-IND) on all international funds transfers through the Indian financial system. The FIUs of Australia and the USA are already mandated to receive such reports.

F. Database of new and closed bank accounts:

6.7 There is also a need to have a central database of all accounts opened and closed in all financial institutions in the country. This database would be of immense help in identifying all the accounts that a person suspected of having black money is operating all over the country, including accounts of his close relatives and business concerns.

6.8 The Financial Intelligence Units (FIU) all over the world are essentially the creation of FATF Recommendations. In the Egmont Group (an organization of all FIUs in the world) the Indian FIU has gained eminence due to its technical and other expertise, and FIU-IND has also come in for exceptional praise by the onsite FATF team. An essential criterion for compliance to FATF Recommendation is autonomy in FIU's organizational structure and its functioning as required by the FATF. Therefore, the FIU should not be kept under the administrative control of the Government for its core functioning, which is collection, analyses and dissemination of financial intelligence.

6.9 The Central Economic Intelligence Bureau (CEIB), which is already collecting data from state poli[illegible]n fake Indian currency notes (FICN), may utilize the resources of FIU by sharing complete details of i[illegible] filed by the state police, which would act as the data base for the FIU and in turn make the anti money laundering and CFT regime stronger. For this purpose CEIB may consider having an MOU with FIU, on the lines of CBDT's MOU with FIU.

DIRECTORATE OF ENFOREMENT

7. Comprehensive amendments to the PMLA have been recommended by the Directorate of Enforcement to the Department of Revenue to make the anti-money laundering law more effective. These are at an advanced stage of consideration.

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TRADE/INDUSTRY BODIES

8. The response of trade & industry bodies to the request for suggestions has not been very encouraging. Only FICCI and ASSOCHAM responded. Their suggestions include bringing transparency through use of technology, reducing the informal and cash economy; prohibiting personal expenses in cash by certain limits, implementing the GST regime, and bringing a scheme to declare undisclosed assets.

SUGGESTIONS FROM PUBLIC

9.1 One common demand from the public is that high denomination currency notes, particularly ₹1) and ₹500, should be demonetized. In this connection, it is observed that demonetization may not be a solution for tackling black money or economy, which is largely held in the form benami properties, bullion and jewellery, etc. Further, demonetization will only increase the cost, as more currency notes may have to be printed for disbursing the same amount. It may also have an adverse impact on the banking system, mainly logistic issues, i.e. handling and cash transportation may become difficult and may also cause inconvenience to the general public as the disbursal or payments of wages/salaries to the workers will become difficult. Besides, it may also adversely impact the environment as more natural resources would be depleted for printing more currency notes. Demonetization undertaken twice in the past (1946 and 1978) miserably failed, with less than 15% of high currency notes being exchanged while more than 85% of the currency notes never surfaced as the owners suspected penal action by the government agencies.[2]

9.2 Some other recommendations received from the public, inter alia, are:-

(i) Declaring black money as national asset and confiscating illicit wealth;
(ii) More stringent laws and punishments, including life-term for those indulging in corruption or stashing black money abroad;
(iii) Special courts should speedily try cases of corruption and economic offences;
(iv) Expand banking operations and use of modern net-driven/mobile technology in monetary transactions;
(v) More transparency in government functioning, particularly in tendering, award of contracts, payments, and delivery of services ;
(vi) Reduce taxes, such as stamp duty, capital gains tax, etc., and simplify procedures;
(vii) Increase public awareness about ills of black money and corruption by including it in school curriculum, launching public campaigns, publishing names of tax-defaulters and persons with illicit accounts abroad;
(viii) Bring a voluntary disclosure scheme with/without penalty and then strictly enforce economic laws;
(ix) Reward to informants of black-money;
(x) Increase the effectiveness of departments dealing with tax laws – increase their manpower, ensure its integrity, incentivize them with 1% of the black money detected, develop good intelligence;
(xi) Bring strong Lokpal Bill to monitor and punish political corruption, dismissal of public servants found to indulge in corruption, debar corrupt politicians from contesting elections; etc.

MEASURES FOR UNEARTHING BLACK MONEY

Provisions to get information, confiscation of foreign assets, etc.

10.1 Different agencies of the Government are engaged in collection of information, which can be

[2] NIPFP & Gupta reports, op cited

used in identification of black money. The Central Board of Direct Taxes (CBDT) and Central Board of Excise & Customs (CBEC) are apex tax bodies of the Central Government and mainly tasked to check the evasion of taxes and trade-based generation of black money. Reporting mechanisms are prescribed under the laws governing levy of income tax, customs, excise and service tax; FEMA and NDPS Act, etc. Financial institutions and intermediaries registered with SEBI are required to furnish details of transactions to the income-tax authorities. Besides, other ministries /departments, such as Ministry of Corporate Affairs, Ministry of Commerce & Industry, and various agencies under them also collect information of varied kinds. Information is sometimes also exchanged in terms of proceedings for bilateral agreements for civil and criminal court proceedings on a case to case basis. Under the EGMONT[3] set-up, Financial Intelligence Units (FIUs) of various countries, including FIU-INDIA, also exchange information. The information exchanged by FIUs may pertain to a whole range of predicate offences and the associated money laundering as well as terrorist financing and can be used by the recipient authorities, subject to prior authorisation of the authority that provided the information. However, the most comprehensive provisions for the exchange of outside information exist in the double tax avoidance or tax information exchange agreements/treaties that India has with various countries (details given later).

10.2 India has criminalised money laundering (ML) under both the Prevention of Money Laundering Act, 2002 (PMLA) as amended in 2005 and 2009, and the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act), as amended in 2001. India's anti-money laundering regime is centred on the PMLA with the formal objective to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering. Section 3 of the PMLA provides that the offence of money laundering is committed where someone "directly or indirectly attempts to indulge, knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property". The Unlawful Activities (Prevention) Act, 1967 (UAPA) tackles the matters relating to terrorism and its financing. The UAPA was amended in 2004 and 2008 to criminalise, inter alia, terrorist financing and to strengthen the fight against terrorism and terrorist financing.

10.3 Counterfeit currency is also one of the sources of generating black money in the country. Therefore, the Directorate of Currency (DoC) has been created in the Ministry of Finance with the approval of the Cabinet. The DoC, inter-alia, monitors and reviews the efficacy of the existing security features in the currency notes. The Directorate of Currency has initiated the process to further upgrade the security features to be incorporated in new series of bank notes expected to be issued in 2012.

10.4 India has committed various issues to FATF through Action Plan, which would help in creating adverse climate to money laundering. The assets of criminals acquired through laundering either in the country or abroad shall be targeted in a greater strength. Amongst the committed issues, some of them having more direct bearing on detection of black money (crime money) are as under:

(i) Section 3 of PMLA criminalize the act of laundering of proceeds of crime relates to Scheduled Offences (i.e. listed offences). The offences listed in Part- B of Schedule can be presently investigated only if proceeds of crime are to the tune of Rs.30 lakhs or more. This threshold is likely to be removed in the proposed amendments. As a result, larger number of fresh cases would be available for investigation under the Act.

(ii) The procedure for confiscation of proceeds of crime has been provided in Section 8. The existing procedure is very lengthy, cumbersome and linked with the conviction in predicate offence. The said procedure is being simplified in the proposed amendment, which shall help in expediting of confiscation action.

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[3] Recognizing the benefits inherent in the development of a network, in 1995 a group of Financial Intelligence Units (FIUs) met at the Egmont Arenberg Palace in Brussels and decided to establish an informal group whose goal would be to facilitate international cooperation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate, especially in the areas of information exchange, training and the sharing of expertise.

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(iii) The FIU-IND is presently generating large number of STR's which are being used by Income Tax department for detection of concealed/undeclared transctions by reported persons/entities. It is expected that in coming years, FIU-IND would may significant role in tracking such transactions and thus help reduce black money in the financial system.

Five-pronged strategy of the Government[4]

In order to unearth black money kept abroad, it is necessary that there is (i) information about the money kept abroad, (ii) adequate legislative and administrative framework to deal with the problem, and (iii) perhaps an enabling scheme for offshore compliance to help inadvertent tax-evaders comply with their tax obligations.

The Central Government has formulated a five pronged strategy[5] for taking action as regards black money kept abroad. The strategy adopted is as follows:

(i) Joining the global crusade against *'black money'*;
(ii) Creating an appropriate legislative framework;
(iii) Setting up institutions for dealing with illicit funds;
(iv) Developing systems for implementation; and
(v) Imparting skills to the manpower for effective action.

11.2 In line with above strategy, the Government has taken several steps in the last two financial years. India as a member of G20 has played very active role in raising various issues relating to curbing the menace of black money, viz. financial transparency and end to banking secrecy (April 2009 at London Summit); develop toolbox of counter measures against non-cooperative jurisdictions (September 2009, Pittsburgh); declaration to conclude Tax Information Exchange Agreement (Seoul Summit, November 2010); getting past banking information (Paris, February 2011 & Washington, April 2011).

11.3 Global Forum on Transparency and Exchange of Information for Tax Purposes was reconstituted in 2009. India has played a key role in finalizing the terms of reference, methodology, assessment criteria and schedule of reviews at New Delhi in February 2010. In June 2010 India became the 34th member of Financial Action Task Force, responsible for enforcement of anti-money laundering (AML) and combating financing of terrorism (CFT) regime. India joined the Task Force on Financial Integrity and Economic Development in order to bring greater transparency and accountability in the financial system. India gained membership of the Eurasian Group (EAG) in December 2010, and is actively participating in policy groups of OECD and UN on Exchange of Information, International Taxation and Transfer Pricing as observer and member respectively. India has also recently signed the Convention on Mutual Administrative Assistance in Tax Matters as amended by the 2010 Protocol.

11.4 In 2009 India had 78 Double Taxation Avoidance Agreements (DTAAs) in force (**TABLE-E1**). Out of these only 3 countries namely Iceland, Tajikistan and Myanmar already had specific provisions for exchange of information. Although in the balance 75 treaties, there are Articles on "Exchange of information", in a number of cases, they are not as per current International Standards. Accordingly, steps are being taken to bring them to the International standards. Simultaneously, negotiations with some other countries (apart from the 78 countries with whom DTAAs existed in 2009) have also been in d. While negotiating new DTAAs, the Government has ensured that the Article concerning exchange of information is in accordance with international standard. Significant progress has been made by India in this regard during the past two years. As on date, negotiations have been completed with 28 countries with which India already has **existing DTAAs**. These agreements have also been initialled by the respective countries. 19 new DTAAs have also been **finalised**, where the Exchange of Information Article is in line with international standards. Thus, **negotiations/renegotiations** of DTAA's with **47 countries** have been

[4] Inputs from FT&TR Division of CBDT
[5] Announced by Finance Minister in the Press Conference on 25th January, 2012

completed, out of which 15 DTAAs have been finally signed. The current status of negotiations is summarized at **TABLE-E2.**

11.5 The amendment to tax treaty with **Switzerland** has also been signed and approved by the Parliament of Switzerland on 17th June 2011. It has entered into force on 7th October 2011. The amended Protocol will allow India to obtain from Switzerland, in specific cases, banking information (as well as information without domestic interest) which relates to period starting from **1st April 2011.**

11.6 India is trying to include in its DTAAs an Article relating to Assistance in Collection of Taxes. Only 30 DTAAs contain an Article on Assistance in Tax Collection. Most of the countries do not wish to have this article as it involves commitment of domestic resources for collection of tax demand of the other ·try. With certain low tax jurisdictions, India has taken steps to sign Tax Information Exchange . iments (TIEAs) in place of comprehensive DTAAs. The current status of these requests is summarized at **TABLE-E3.** In all the TIEAs negotiated by India, there is provision for Tax Examination Abroad which will help the Government in sending its officers abroad for investigation. Government has also enacted legislation to prescribe tool box of counter measures as an anti-avoidance measure by inserting section 94A into the Income-tax Act through Finance Act, 2011.

11.7 The following specific new provisions are proposed for checking generation of black money in the **Direct Taxes Code Bill:**

a. For the purpose of levy of wealth tax, taxable assets have been defined to include deposits in banks located outside India in case of individual, unreported bank deposits in case of others, interest in a foreign trust or any other entity (other than foreign company) and any equity or preferential shares held in a controlled foreign company.

b. The General Anti Avoidance Rule **(GAAR)** has been incorporated to deal with aggressive tax planning devices used to circumvent tax laws.

c. Specific Controlled Foreign Company **(CFC)** rules have been incorporated to bring to tax passive income earned by residents from substantial shareholding in companies situated in low tax jurisdictions.

d. A reporting requirement has been introduced making it obligatory on the part of resident assessees to furnish details of their investment and interest in any entity outside India in the form and manner as may be prescribed.

11.8 The Prevention of Money Laundering Act **(PMLA)** was amended on 1st June 2009, whereby the predicate offences listed in the Schedule of the Act were substantially increased. This amendment has widened the scope of money laundering investigations.

11.9 Government has set up dedicated computerised Exchange of Information **(EoI) Cell** for an effective exchange of information to curb tax evasion and also created the **Directorate of Income Tax (Criminal Investigation),** or **DCI,** in the Central Board of Direct Taxes vide a notification dated 30th May 2011. The DCI, headed by a Director General of Income Tax (Criminal Investigation) at New Delhi, will perform functions in respect of criminal matters having any financial implication punishable as an offence under any direct tax law. The Government has already set up Income-tax Overseas Units in two Indian M ons abroad, and eight more such units are being setup to strengthen the information exchange mechanism. The Government has strengthened the Foreign Tax Division, which deals with the work of exchange of information, and the Investigation Division of CBDT. The Directorate of International Taxation and Transfer Pricing in the Income-tax Department have been strengthened, as flow of money outside India also takes place through mispricing of international transactions. The Directorate of Enforcement has also been strengthened by creating additional posts. As a part of capacity building and skill development, 80 officers were imparted specialized training in the field of International Taxation and Transfer Pricing in the last two years. Foreign training for officers in investigation and criminal investigation matters is also in the pipeline.

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Results achieved

11.10 The fight against black money, both inside and outside the country, has yielded the following results in the last few years:

I. On the basis of information received from German tax authorities, tax assessments were completed in 18 cases resulting in detection of undisclosed income of Rs.39.66 crore and tax demand of Rs.24.26 crore, out of which Rs.11.75 crore has already been recovered. Prosecution complaints have been filed in 17 cases for various offences under the Income-tax Act, 1961.

II. 9,920 pieces of information regarding details of assets held and payments received by Indian citizens in several countries have been obtained which are under different stages of investigation.

III. On the basis of investigations into information received from France, in 219 cases, undisclosed income of Rs.565 crore has been detected and taxes amounting to Rs.181 crore have already been realized so far.

IV. Specific requests for information have been made to various countries in 350 cases by tax authorities till date.

V. 38,828 pieces of domestic information about suspicious transactions has been obtained by FIU which are under investigation by respective agencies.

VI. Investigation wing of CBDT has detected concealed income of Rs.18,750 crore in last two financial years (FY 2009-10 & 2010-11). During the first ten months of the current year, concealed income of Rs.3,887 crores have been detected. Focused searches have been conducted in a number of cases in the current year on the basis of information received from foreign jurisdictions as also domestic sources.

VII. Directorate of Transfer Pricing has detected mispricing of Rs.66,085 crore since 1.4.2010, preventing shifting of equivalent profit out of the country. Directorate of International Taxation has collected taxes of Rs.33,784 crore from cross broader transactions in last two financial years.

VIII. International organisations like Global Forum, OECD, Task Force on Financial Integrity, etc. have appreciated the role that India is playing in the crusade against black money.

Amendments to the Income Law[a]

12.1 Section 90 of the Income-tax Act may be amended retrospectively to define the meaning of the term "may be taxed", used in various DTAAs/DTACs, in order to protect the interest of revenue.

12.2 Section 118 of the Direct Tax Code Bill, 2010 provides that the Central Board of Direct Taxes, with the approval of the Central Government, may enter into an advance pricing agreement (APA) with any person. Similar provision may be introduced in the Income-tax Act, 1961 so that APA regime can be implemented from 1.4.2012.

12.3 GAAR and CFC provisions are included in the Direct Tax Code Bill 2010. Similar provision may be introduced in the Income-tax Act, 1961 so that these provisions can be implemented from 1.4.2012. Further, an amendment may be made so that GAAR, CFC and specific anti-avoidance measures in the Income-tax Act, override the agreements entered with foreign countries or specified territories or specified associations, under section 90 or 90A of the Act.

[a] Suggested by FT&TR Division of CBDT

12.4 In recent times it has been observed that when information is received in respect of undisclosed assets held abroad, the Assessing Officer is not able to bring such income to tax because of the time limitation imposed by the Income Tax Act. At present, section 148 read with section 149 of the Act imposes a time limitation beyond which past assessments cannot be re-opened to bring to tax such income which has escaped assessment and is represented by undisclosed assets held abroad. This time limitation has been prescribed for the sake of bringing certainty in tax assessments but is presently emerging as a major bottleneck in bringing to tax income represented by undisclosed assets held abroad. Necessary amendments in the Act should be made to ensure that whenever such undisclosed income represented by assets held abroad is detected, it is brought to tax irrespective of the period to which such undisclosed income pertains.

To facilitate Exchange of Information, a new clause (viii) has been inserted in Explanation to Section 153 in the Income Tax Act, 1961 through Finance Act, 2011 to provide that period commencing from the date on which a reference for exchange of information is made by the competent authority under a DTAA/TIEA and ending with the date on which the information so requested is received by the Commissioner or a period of six months, whichever is less, shall be excluded. As in a number of cases the period in which information is received from a foreign jurisdiction exceeds six months, the law may be amended to exclude the entire period taken to receive the information. In addition, a further period of 60 days may be provided after receipt of information for completion of assessment proceedings to enable the AO to confront the assessee.

12.6 Section 115BBA is a presumptive section for calculating income of non-resident sportsmen (including athlete) or sports association. Similarly, section 194E allows withholding of tax at source from the income of non-resident sportsmen (including athlete) or sports association. However, the scope of these two sections is very limited when compared to Model Article 17 of the DTAA which covers not only the sportsmen but also entertainers in theatre, motion picture, radio or television artiste, or a musician. They are currently outside the purview of section 115BBA as well as 194E. Thus the presumptive taxation of 10% on gross income cannot be applied and also there is no provision of withholding. It would be proper that they are clubbed with sportsmen under the Income-tax Act as they are clubbed under the DTAAs to bring synergy between DTAAs and Income-tax Act and such persons under the tax net.

12.7 In the Direct Taxes Code Bill, a reporting requirement has been proposed making it obligatory for resident assessees to furnish details of their investments and interests in any entity outside India in the form and manner as may be prescribed. In the return form under the present Income Tax Act also, provision may be made for resident taxpayers to furnish details of their investments and interests in any entity outside India, as their global income is taxable in India.

12.8 Government has taken several steps on the issue of black money of Indian citizen stashed abroad. One of the handicaps in the law is that there is no requirement to report foreign bank accounts in the tax return. There is a need to provide for such a reporting mechanism along with strict penalty for non compliance or wrong reporting. This will strengthen the fight against tax evaders who are parking black money abroad. In the proposed Direct Taxes Code, as per clause 113(2), the specified assets for the purposes of wealth tax include

(i) deposit in a bank located outside India, in case of individuals and Hindu undivided families, and in the case of other persons any such deposit not recorded in the books of account;

(j) any interest in a foreign trust or any other body located outside India (whether incorporated or not) other than a foreign company; and

(k) any equity or preference shares held by a resident in a controlled foreign company, as referred to in the Twentieth Schedule.

The purpose of this provision is to have a reporting requirement of assets held abroad. This reporting requirement should include all investments made outside India by all the categories of taxpayers. This provision may be inserted in the present Wealth Tax Act also.

12.9 Section 115BBD has been amended in the Finance Act, 2011 to provide that dividends received by an Indian company from its foreign subsidiaries will be taxable at a reduced rate of 15%. This provision may be used for laundering of the black money stashed abroad and may be brought back to India through foreign subsidiaries of Indian companies as dividends after paying tax only at 15%. In addition to seriously jeopardizing our efforts in combating the menace of black money, this amendment is being seen by many honest taxpayers as a tax amnesty scheme benefiting tax evaders. This amendment may be withdrawn,

12.10 The report of the Committee on making amendments in Transfer Pricing Law in India may be implemented to curb the generation of black money through transfer pricing. Legislative amendments similar to introduction of a Foreign Account Tax Compliance Act (FATCA) passed in USA recently may be (dered.

I. General Anti Avoidance rules (GAAR)

12.10.1 The GAAR has been provided in clause 123 of the Direct Taxes Code Bill, 2010. In view of the fact that a large number of transactions are not coming into tax net due to schemes designed specifically for the purposes of avoidance of taxes, including in the cross-border transactions, and in view of the prescription prescribed by the Hon'ble Supreme Court in the case of Vodafone International Holdings BV vs. Union of India (hereinafter referred to as Vodafone case), it is proposed that the GAAR may be provided through the Finance Bill, 2012. Further, in the light of the Supreme Court's decision in the Vodafone case, it needs to be ensured that the provisions relating to GAAR should be suitably modified so that some of the observations made by the Hon'ble Court may not be interpreted in such a manner so as to make the GAAR provisions ineffective. It is accordingly proposed that after clause (f) of sub-section (1) of section 123 of the Direct Taxes Code Bill, following clause may be added as under:

> "(g) looking through the arrangement or transaction including by disregarding the corporate structure or by lifting the corporate veil."

12.10.2 As per section 291(9) of the DTC Bill, 2010, the provisions of section 123, relating to GAAR, will be applied, whether or not such provisions are beneficial to him. In other words, the provisions of GAAR will be applicable even if the taxpayer is a resident of a country with which India has a DTAA in which such provisions are not there, providing a limited treaty override. It is proposed that suitable changes may be made in sections 90 and 90A so that in the Income-tax Act also, there will be treaty override on applicability of GAAR provisions.

II. Limitation of Benefits

12.10.3 The Supreme Court in Vodafone case has held that the provisions relating to Limitation of Benefits (LOB) are matter of policy and thus in a way prescribed the legislature to introduce such provisions in the Income-tax Act and/or in the treaties. A decade ago, the Hon'ble Supreme Court had held that in absence of LOB clause in the DTAA between India and Mauritius, in contrast to the LOB provision in the Indo-USA treaty, the treaty benefits cannot be denied. Despite our best efforts, we have not been able to introduce LOB provision in the Indo-Mauritius DTAA as Mauritius does not agree for renegotiation of the treaty, resulting in substantial loss of revenue to the exchequer. Not only in Mauritian treaty, but in a n er of our other DTAAs, there are no provisions for LOB and we have not been able to renegotiate th DTAAs due to resistance from those countries. The Supreme Court in Vodafone case has examined the absence of LOB provision in the India-Mauritius DTAA and held as under:

> "We are, therefore, of the view that in the absence of LOB Clause and the presence of Circular No' 789 of 2000 and TRC certificate, on the residence and beneficial interest/ownership, tax department cannot at the time of sale/disinvestment/exit from such FDI, deny benefits to such Mauritius companies of the Treaty by stating that FDI was only routed through a Mauritius company, by a company/principal resident in a third country; or the Mauritius company had received all its

funds from a foreign principal/company; or the Mauritius subsidiary is controlled/managed by the Foreign principal; or the Mauritius company had no assets or business other than holding the investment/shares in the Indian company; or the Foreign Principal/100% shareholder of Mauritius company had played a dominant role in deciding the time and price of the disinvestment/sale/ transfer; or the sale proceeds received by the Mauritius company had ultimately been paid over by it to the Foreign Principal/ its 100% shareholder either by way of Special Dividend or by way of repayment of loans received; or the real owner/beneficial owner of the shares was the foreign Principal Company."

12.10.4 Thus, the Supreme Court has held that almost in no case, treaty benefit can be denied to Mauritian companies, till the DTAA is revised or at the least, a LOB clause is introduced. It is accordingly p sed that Circular No. 789 of 2000, which has been issued by the CBDT, should be withdrawn. However, only the withdrawal of circular would have no effect, if the ratio of the above decision is applied. In view of the above, it is proposed that LOB provision may be introduced in the Income-tax Act with a limited treaty override on this issue meaning that even if there are no LOB provisions in a particular treaty, the domestic law will take precedence. Accordingly, the following amendments are proposed by way of a proviso below sub-section (2) of section 90 and section 90A:

"Provided that the benefit of the Agreement, entered into under sub-section (1), shall not be available to a treaty resident, or with respect to any transaction undertaken by such treaty resident, if the main purpose or one of the main purposes of the creation or existence of such a treaty resident or of the transaction undertaken by such treaty resident, was to obtain benefits under the Agreement that would not otherwise be available."

12.10.5 The term "treaty resident" would then have to be defined in Explanation (below Explanation 2) of section 90.

"Explanation 3: For the purposes of this section, the term 'treaty resident, means resident of a country outside India, or specified territory outside India, with which an agreement has been entered into under sub-section (1)."

12.10.6 Similarly the term "treaty resident" would have to be defined in Explanation (below Explanation 2) of Section 90A

"Explanation 3: for the purposes of this section, the term 'treaty resident' means resident of a specified territory outside India, with which an agreement has been entered into under subsection (1)."

iii. <u>Measures to prevent Round Tripping</u>

12.10.7 The Hon'ble Supreme Court in the Vodafone case had observed that instances are also there when individuals form offshore vehicles to engage in risky investments, through the use of derivatives trading, etc. and many such companies do, of course, involve in manipulation of the market, money laundering and also indulge in corrupt activities like round tripping, parking black money or offering, accepting etc., directly or indirectly bribe or any other undue advantage or prospect thereof. After discussing in ( ), the tax havens, treaty shopping and shell companies; it states in para 106 of the decision that the facts stated above are food for thought to the legislature and adequate legislative measures have to be taken to plug the loopholes. In the last two years, we had renegotiated a number of our existing DTAAs for bringing them to the international standards on transparency and exchange of information for tax purposes and it is expected that in the coming years, we will be receiving information from a number of such jurisdictions. Similar results are expected from the Tax Information Exchange Agreements (TIEAs) we had entered into with some of the well-known tax havens such as Cayman Islands and British Virgin Islands. However, even if we receive the requisite information, the present provisions in the Income-tax

Act may not be sufficient to bring to tax the income which has been round-tripped or the black money which has been parked abroad. In view of the above, it is proposed that if the taxpayer has received foreign investment in the form of capital or long term loan or debentures, by whatever name known, above a prescribed limit, or has received deposits or donation above a prescribed amount, it will be required to furnish the details of the beneficial owner of the concern/entity making the investment/deposits/ donations. The term "beneficial owner" may be defined in similar way as used in the PMLA, that is, the beneficial owner shall mean the natural person who ultimately owns or controls the person making donation or deposit or investment as the case maybe and the person on whose behalf the transaction is being conducted, and includes a person who exercises ultimate effective control over a juridical person. It may be noted that the Financial Action Task Force (FATF) has given 40+9 recommendations to prevent money le tering. These recommendations have been endorsed by 180 countries and jurisdictions and are re nized as Anti Money Laundering/Counter Terrorism Financing Standards. The recommendation No.5 of the FATF recommendations deals with the concept of beneficial ownership. The reporting requirement of the beneficial ownership will work as deterrence for the money laundering and tax evasion as the taxpayers will be required to report the beneficial owners of the foreign investments. It is proposed that section 68 may be amended to provide that if a taxpayer receives the above referred to foreign investment or donation, the burden lies on him to prove the identity of the beneficial owner, his genuineness and his credit worthiness. The draft amendment is proposed as under:

"Explanation: For the removal of doubts, it is hereby clarified that onus is on the assessee to offer explanation about the nature and source of the sum found credited in the books, where the sum credited represent donation or deposits or investment in the form of capital or loan or debenture, by whatever name known, including explanation with regards to the

(i) Identity of the beneficial owner of the person making donation or deposit or investment of the case maybe;

(ii) Creditworthiness of the beneficial owner of the person making donation or deposit or investment, as the case maybe; and

(iii) Genuineness of the transaction.

The term "beneficial owner" shall mean the natural person who ultimately owns or controls the person making donation or deposit or investment as the case maybe, and the person on whose behalf the transaction is being conducted, and includes person who exercises ultimate effective control over a juridical person."

ANNEX-A1

Federation of Indian Chambers
of Commerce and Industry

FICCI

Dr Rajiv Kumar
Secretary General

January 12, 2012

Shri Shishir Jha
CIT (Investigation)
Central Board of Direct Taxes
Ministry of Finance
New Delhi

Dear Mr Jha,

Suggestions for Curbing generation of Black Money

This is in response to your Tax letter No.291/15/2011 IT (Inv.I) dated 30th December, 2011 inviting FICCI's suggestions for curbing generation of black money in India.

Based on the inputs received from our constituents, we would like to submit as under:

- FICCI supports the efforts of the government to curb the menace of black money. The problem of tax evasion has been a subject matter of fact is by many an interest. Recently Tax Justice Network, a London based watchdog that fights against tax havens published a study on the subject. It suggests that the size of the shadow economy ranges from 8.6% in the USA to 13% in Japan to 27.6% in Italy, 31% in Brazil and 43.8% in Russia. For a developing economy like India, the loss of tax revenues lost as a result of the shadow economy is significant and this can have a material bearing on the future development of the economy.

- Whilst there are several measures that can be taken to reduce the size of the shadow economy, the one key issue is the use of technology. While a lot of effort has gone in this direction, the ability of the revenue to link up the Annual Information Returns filed by corporate, the exemption claims made, the tax withholding certificates filed, etc is a key link to tracking the flow of funds and plugging elements of shadow economy.

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- Currently, there are restrictions on the deductibility of cash expenses, cash deposits and repayments of deposits in cash. There is, however, no restriction on personal expenditure in cash. This is one key area where cash is deployed. Payments in cash for household purchases, electronics, etc is an area which is not flagged and is a channel for the parallel economy to flourish. The government should consider provisions that all payments beyond a particular limit should be only through credit cards/bank instruments. This could be introduced initially in the cities and spread over a period of time to other locations.

- The government should also evolve suitable strategies to stop generation and perpetuation of new black money through controlling fresh cash expenditure, real estate transactions, and to bring into main stream the past accumulated cash.

- Goods and Services Tax (GST) when finally introduced, would act as a great deterrent for individuals and companies to avoid payment of taxes.

- Finally, the government should consider announcing one time amnesty schemes, to motivate nations to bring back their funds lying overseas.

We trust, the above will help in curbing the generation of black money.

With best regards

Yours sincerely,

Rajiv Kumar

ANNEX-A2

ASSOCHAM
INDIA

BLACK MONEY MENACE IN INDIA

ASSOCHAM Recommendations

January 2012,

The Associated Chambers of Commerce and Industry of India
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1, Community Centre, Zamrudpur, Kailash Colony, New Delhi – 110048
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ACKNOWLEDGEMENT

The ASSOCHAM President, Mr. Dilip Modi, in September 2011 appointed an expert committee to study and recommend realistic strategy to the Government of India on the issue of black money. The committee was chaired by Mr. Ved Jain, Chairman, ASSOCHAM National Council on Direct Taxes and former President, Institute of Chartered Accountants of India, and co-chaired by Mr. R. K. Handoo, Chairman, ASSOCHAM Legal Affairs Council and an eminent Supreme Court Advocate. The committee comprises of luminaries from industry, legal, professional and social sector as its members.

ASSOCHAM hopes that the Government will find the recommendations / suggestions of the committee very useful.

January 2012

D. S. Rawat
Secretary General
ASSOCHAM

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Black Money Menace in India

Individuals and institutions globally are engaged in evading taxes and generating surpluses which do not get accounted for in the formal economy. These funds are generated from activities which may be legal or illegal by nature. However the mere fact that taxes have not been paid on such incomes, as per the rules of the land, converts such funds to form a part of the parallel economy or Black Money generation. The fund generated is normally held as currency notes and/or assets through investments in gold, jewellery, precious stones, art and artifacts, real estate and others. The literature revealed that strong parallel economies are created due to high level of corruption and weak hold of regulatory mechanism in developing regions of the world.

The Wanchoo Committee stated that 'the term Black Money is generally used to denote unaccounted money or concealed income and/or wealth as well as money involved in transactions wholly or partly suppressed'.

In India, Kaldor's estimates for black money generation in 1953-54 were about Rs.600 crores (i.e. 6% of National Income then) on account of tax evasion only. Some other estimates further put the black money generated in India annually as Rs 700 crore (1961-62); Rs. 1,000 crores (1955-65); Rs. 2,420 crores (1968-69). Estimates by Dr Rangneker for the same periods were Rs. 1,150 crore, (beginning of 1960s) Rs. 2,850 crore (mid 1960s) and Rs. 2833 crore by the late 1960s.

The Indian Institute of Finance study indicated that the growth rate of black money in 1991 has been at a rate of Rs 60,000 crores per year. N. Vittal, Former Indian Chief Vigilance Commissioner in 2012, estimated that the yearly growth rate of Black money is a factor to the tune of 40-50 percent of GDP growth in the Indian economy on a year to year basis.

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Another concept that has close proximity to black money is the money laundering. The term laundering is referred to as investment or other transfer of money flowing from racketeering, drug transactions and other sources (illegal sources) into legitimate channels so that its original source cannot be traced. The traditionally known activities for laundering of money are via drugs, racketeering, kidnapping, gambling, procuring women and children, smuggling (alcohol, tobacco, medicines), armed robbery, counterfeiting and bogus dealing, tax evasion and misappropriation of public funds.

Both black money and money laundering results in capital flight. Capital flight may be defined as transfer of assets denominated in a national currency into assets denominated in a foreign currency, either at home or abroad, in ways that are not part of normal transactions. One technique that can be used to create significant amounts of capital out of a country is the over-invoicing of imports and the under-invoicing of exports.

It may be noted that that illicit flows differ from the broadest definition of capital flight which also includes "normal" or "legal" outflows due to investors' portfolio choices. Specifically, illicit flows are comprised of funds that are illegally earned, transferred, or utilized — if laws were broken in the origin, movement, or use of the funds then they are illicit. The transfer of these funds is not recorded anywhere in the country of origin for they typically violate the national criminal and civil codes, tax laws, customs regulations, VAT assessments, exchange controls, or banking regulations of that country.

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An important study conducted by Quan and Rishi (2006) empirically examined the role of corruption in impelling capital flight. Corruption was broadly defined as the abuse of public office for private gain. There is an implicit belief that popular mechanisms of capital flight, such as bribes and kickbacks on government contracts, trade misinvoicing, outright cash transfers, and smuggling are instances of corruption in the broadest sense. Identifying corruption as one dimension of poor governance, the empirical analysis explores direct linkages between corruption and capital flight in a broad sample of countries. The study hypothesized that: Does corruption impel capital flight by raising the risk of domestic investment, ceteris paribus? This hypothesis was tested for a panel of 69 countries over a seven-year period from 1995–2001. In this regard the study mentioned that,

- Political instability and poor governance contribute to a domestic environment that deters investment and induces capital flight.
- Corruption works as a regressive tax – the poor pay a disproportionate share of their income in the form of bribes to secure access to public services.
- Bribes and official extortion act as an extra tax and therefore deter potential foreign direct investment in developing countries. Corruption acts as a source of macroeconomic vulnerability and lower economic growth.

Governance is understood to have six dimensions: voice and accountability, political stability and the absence of major violence, government effectiveness, regulatory quality, rule of law, and the control of corruption. The panel data analysis on corruption and capital flight indicated a positive and significant effect of corruption on capital flight. Especially, it suggests that an increase in corruption by one standard deviation induces an increase of almost 3 percent in capital flight.

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The World Bank method compares the sources of external finance (the change in external debt and net foreign direct investment), with the uses of finance (current account deficit and the change in official reserves). Sources of funds exceeding recorded uses of funds reflect unrecorded outflows. Sources of funds include increases in net external indebtedness of the public sector and the net inflow of foreign direct investment. Uses of funds include financing the current account deficit and additions to reserves. In this broad macroeconomic framework, illicit outflows (inflows) exist when the source of funds exceeds (falls short of) the uses of funds. Thus:

(Source of Funds) - (Uses of Funds)

Illicit Outflow = [Δ External Debt + FDI (net)] - [Current Account Balance + Δ Reserves]

The above model estimates are adjusted for trade mispricing, which has been long recognized as a major conduit for capital flight. The underlying rationale is that residents can shift money abroad illicitly by over-invoicing imports and under-invoicing exports. In order to capture such illegal transactions, a developing country's exports to the world (valued free on-board (fob) in US dollars) are compared to what the world reports as having imported from that country, after adjusting for the cost of insurance and freight. Similarly, a country's imports from the world net of freight and insurance are compared to what the world reports it has exported to that country.

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Tax evasion is one of the major reasons for the creation of an underground economy. There are 70 tax havens and secrecy jurisdictions and that there are millions of dummy corporations that shield the owner's identity. Through transfer pricing, false documentation, fake corporations, tax havens and secrecy jurisdictions, Western banks and businesses handle $ 1 trillion of illicit proceeds every year. Assets in tax havens are estimated at $ 11.5 trillion and for every $ 1 that poor countries receive in foreign aid, an estimated $ 10 flows abroad through illicit transfers. There is capital flight from developing and transition countries to developed countries to the extent of $ 500 billion every year. In December 2008, GFI produced a report that was even more specific. For this five-year period between 2002 and 2006, this study estimated that illicit financial flows from developing countries amounted to between $ 850 billion and $ 1.06 trillion a year. This capital flight occurred through trade mispricing, criminal and commercial smuggling (drugs, minerals, contraband goods) and enlarged asset swaps.

Thanks to OECD and G-20 pressure, several tax havens have now changed their policies. There is an OECD list of tax havens and financial centers that have already implemented the standards, or have committed to the standards, though they are yet to implement them. One example is in Switzerland. Swiss banks used to be bound by the Banking Law of 1934. Traditionally, Swiss law distinguished between tax evasion and tax fraud. The latter had direct criminal intent and international tax cooperation used to be provided only when there was tax fraud, not when there was tax evasion. But because of G-20 and OECD pressure, the Swiss have eliminated this.

All G20 governments have now agreed to a multilateral Convention to tackle tax evasion more effectively. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters offers a wide range of tools for cross-border tax co-operation. It includes automatic exchange of information, multilateral simultaneous

tax examinations and international assistance in the collection of tax due. At the same time, the Convention imposes safeguards to protect the confidentiality of the information exchanged

India has 83 double tax avoidance agreements (DTAAs) and another 20 countries with which it has limited tax agreements. But the point is that DTAAs do not necessarily have clauses on the exchange of tax information. Therefore, India needs to sign tax information exchange agreements (TIEAs) urgently, especially because the global climate has changed in favour of such TIEAs. At present, India only has one TIEA, signed with Bermuda on 7th October 2010. Another 22 TIEAs are reportedly being renegotiated. The Finance Minister outlined a five-pronged strategy for handling the problem of black money: (1) Join the global crusade against black money; (2) Create an appropriate legislative framework, (3) Setting up institutions for dealing with illicit funds; (4) Developing systems for implementation; and (6) Imparting skills to manpower for effective action. This strategy, with the inclusion of the TIEAs, is unexceptionable. But it is preventive. Even when a TIEA is signed, it is likely to be prospective, not retrospective. That is, such a strategy handles the problem of future flows of illicit capital flight. It doesn't address the problem of Indian money that is already abroad. Those are valuable resources and, if brought back, can be used to fund India's physical and social infrastructure needs.

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[redacted]

Several countries are currently operating voluntary compliance programmes. Such rules or programmes provide an opportunity to facilitate compliance in a timely and cost effective manner, saving costly and contentious audits, litigation and criminal proceedings. Voluntary compliance initiatives must walk a fine line between providing sufficient incentives for those engaged in noncompliance to come forward and not rewarding or encouraging such conduct. Effective voluntary compliance programmes offer the opportunity to maximize the benefits of improvements in transparency and exchange of information for tax purposes, to increase short-term tax revenues and improve medium-term tax compliance.

The increase in the risk of detection through improved international tax co-operation coupled with the availability of voluntary disclosure programmes has led to a large number of taxpayers coming forward and significant amount of tax being collected. For instance, more than 14,700 taxpayers took advantage of a recent US initiative and in Germany more than 20,000 taxpayers made a voluntary disclosure resulting in reported additional revenue to the German government to the range of 4 billion Euros.

Table 1 gives a bird's eye view of the recent initiatives taken by different countries to improve offshore compliance and their results

Table 1

Recent Country Initiatives to Improve Offshore Compliance

[redacted]	[redacted]	[redacted]
Argentina	Voluntary Disclosure Initiative (2009)	EUR 146 million additional revenue yield.
Australia	Offshore Voluntary Disclosure Initiative (2010/2011)	EUR 150 million (AUD 210 million) additional revenue assessed. More than 6 000 taxpayers involved.

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Brazil	Voluntary Compliance Initiative (2009)	Estimated EUR 315 million additional revenue yield.
Canada	On-going Voluntary Disclosures Program (latest years ending in 2009-2011)	EUR 620 million (CAD 850 million) total unreported income disclosed. 6,700 disclosures.
China	Broadening the network of tax information exchange agreements and increasing numbers of requests.	EUR 80 million (CNY 690 million) additional revenue yield (in 2010), expected to grow significantly.
Denmark	"Project havens" aimed at uncovering hidden wealth and income abroad.	More than EUR 50 million additional revenue yield so far.
France	Offshore Voluntary Disclosure Initiative (2009)	EUR 1.2 billion additional revenue yield. More than 4 700 taxpayers involved.
Germany	Voluntary Disclosures (2010/2011)	Estimated additional revenue yield of EUR 1.8 billion. Between 25 000 and 30 000 taxpayers involved.
India	Increase of staff number, greater co-operation with G20 partners, increase in exchange of information agreements	Significant additional revenues expected over next two years.
Ireland	Voluntary Disclosures (since 2009)	EUR 70 million additional revenue yield. Around 400 taxpayers involved. An earlier initiative yielded over EUR 1 billion.

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Italy	Offshore Voluntary Disclosure Initiative (2009/2010)	EUR 5.6 billion additional revenue yield. Total undisclosed assets: EUR 104.5 billion. Representing five times the amount from the 2002/2003 initiative.
Korea	Establishment of the Offshore Compliance Enforcement Center (2009) and offshore tax evasion cases uncovered through tax audits (since 2009)	EUR 510 million (KRW 810 billion) additional revenue assessed.
	Foreign Financial Accounts Reporting Program (2010)	More than 500 taxpayers involved.
Mexico	Offshore Voluntary Disclosure Initiative (2009)	EUR 58 million (MXN 1,037 million) additional revenue yield. Total undisclosed assets: EUR 1,073 million (MXN 19,436 million).
Netherlands	Voluntary disclosure program on offshore accounts	EUR 496 million additional revenue yield so far. More than 9 000 taxpayers involved
	Tackling the diversion of profits resulting from the transfer of intangibles by individuals and SMEs to or from/via tax jurisdictions	EUR 20 million additional revenue yield so far and expected to raise EUR 350 million over a 10 year period.
Norway	Voluntary Disclosures	EUR 30 million additional revenue
Portugal	Exceptional Regime of Tax Regularization of Assets (2009)	EUR 85 million additional revenue collected. Around 1 000 taxpayers involved

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South Africa	Voluntary Disclosure Program (2010)	EUR 22 million additional revenue yield (ZAR 229 million)
Spain	Compliance Initiatives focused on Individuals	EUR 260 million additional revenue yield
Turkey	Offshore Voluntary Disclosure Initiative (2009)	EUR 225 million additional revenue yield (TRY 566 million). Total undisclosed assets: EUR 11.25 billion (TRY 27.9 billion).
United Kingdom	Liechtenstein Disclosure Facility	EUR 160 million additional revenue yield (GBP 140 million). More than 1'550 taxpayers involved.
	New Disclosure Opportunity	EUR 160 million additional revenue yield (GBP 85 million). Approximately 3'500 disclosures.
United States	Offshore Voluntary Disclosure Initiatives (2009 and 2011)	EUR 2 billion additional revenue yield (USD 2.7 billion) recovered thus far from the 2009 and 2011 initiatives. More than 30 000 taxpayers involved.
	Switzerland Disclosure (2009)	Disclosure of 4 450 accounts.

Source: Organization for Economic Development (2012) "The End of Bank Secrecy is Dawn", October 2h

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There are no official estimates of black money in India. All the estimates made by the non-government sources though indicate generation of large amounts of black money in India, there exists a large variation about the amount of black money. For instance, the Bureau of International Narcotics and Law Enforcement Affairs of United States Department of State in its Report on 'Money Laundering and Financial Crimes' Vol.2, published in March 2010, observed that private analysts estimate India's black market to range from $2.2 - $2.5 trillion.

Prof. R.Vaidyanathan, Professor of Finance, Indian Institute of Management, who worked on the subject of "Tax havens and Illegal Funds of India", quoted that the amount of the Indian money stashed abroad may be of the order of $1.4 trillion.

Agarwal and Agarwal observed that during the period 1995-2009, illicit financial flows from the Indian non-bank private sector into developed country banks and offshore financial centers (OFCs). India's private sector shifted away from bank deposits to deposits in OFCs. As the share of OFC deposits increased from 36.4 percent of total deposits in 1995 to 54.2 percent in 2009, deposits in banks fell commensurately to 45.8 percent in the last year. As OFCs are subject to even less oversight than banks and typically hold a larger share of illicit funds, the increasing recourse to OFC deposits relative to banks could be symptomatic of the burgeoning underground economy in India from which such funds emanate.

A more recent study, Kar, Dev and Cartwright-Smith (2008), India lost between US$23.7-$27.3 billion annually in illicit financial flows (IFFs) during 2002-2006.

Shankar Acharya and his colleagues at the National Institute of Public Finance and Policy (NIPFP) undertook what is still the most comprehensive study on the size of the black economy in India. Stated simply, this study found that the size of the black economy in India was less than 30% of GDP and was more like 21%. A

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subsequent study by Arun Kumar placed it at 35%. There are estimates of around 30% that also float around.

"All these estimates are based on various unverifiable assumptions and approximations. Government has been seized of the matter and has constituted a multidisciplinary committee to get studies conducted to estimate the quantum of illicit fund generated by Indian citizens." This is a statement from the Finance Minister's Press Conference on 25th January 2012.

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In view of the current relevance of the subject, ASSOCHAM organized a series of interpol meetings. The outcomes of these meetings are as follows:

A. ASSOCHAM is of the view that the generation of the black money in the country is mainly due to the following factors:

1. **Real Estate Transactions:**

It is a common knowledge that most of the real estate transactions are understated. There are several reasons for the same. However the main reason for understatement of the real estate transactions is the high rate of stamp duty levied on registration of the property. Further at the time of the resale there is no system of allowing credit of the stamp duty paid at the time of purchase.

Suggestions:

(a) Therefore, there is a need to introduce a uniform stamp duty rate applicable across the country. ASSOCHAM is of the view that a stamp duty rate of 5% is fair and reasonable rate with the benefit of allowing credit of the stamp duty paid at the time of the purchase.

(b) It is further recommended that the mechanism of determination of circle rate being notified by each of the States also be streamlined. The circle rate needs to be notified every year on the basis of the data input for the preceding year so as to make sure that the circle rates are as good as the prevalent market rate.

(c) ASSOCHAM is of the view that reduction in the stamp duty rate with credit of the stamp duty paid at the time of the purchase will not have any impact on

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revenue collection of the State Governments and will go a long way in curbing the menace of black money

II. Expenditure on Elections:

One of the main factors contributing to the parallel economy in the form of black money is the huge expenditure required to be incurred on elections. In the country, we have elections not only for the Parliament but also for the State Assemblies, Municipal Corporations, Panchayats as well. It is a common knowledge that candidates spend huge amount of money in the elections and most of such money is unaccounted money. The reason for this unaccounted expenditure are two fold – i) the restriction on the total amount of the expenditure a candidates is legally allowed to spend, and ii) absence of legitimate source of income in the hands of the candidates contesting elections.

Addressing these issues and ensuring transparent way of financing the democracy has long been part of the public debate. Country has remained a distant onlooker debating the issue. A vague idea of how big this problem is, can be had from the fact that on an average about Rs.10 Crore per Parliament seat is the expenditure incurred by the candidates contesting the elections and about Rs.3 Crore is the expenditure incurred by the candidates contesting the State Assembly elections. Assuming that elections are being held once in five years, the total expenditure being incurred by the candidates for Parliament and Assembly Elections itself will be more than Rs.25,000 Crore. Besides this a huge amount of expenditure is being incurred on elections to the Municipal Corporations and Panchayats also

The Election Commission has fixed unrealistic Cap of Rs. 40 lakhs per parliament seat and Rs 16 lakhs per Assembly seat.

The world's leading democracies such as US, UK and Germany have enacted laws relating to public funding of the elections.

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Chamber is of the view that it is high time that the country enacts laws relating to public funding. Further there is a need to consider the ground realities while fixing the ceiling of expenditure a candidate can spend in the elections.

iii. Misuse of discretion by the public authorities:

There's a lot of hue and cry in the country on account of corruption, which is due to the misuse of discretion by the public authorities. This misuse of discretion by public authorities has led to the generation of a lot of black money in the system, which cannot be accounted for by the public authorities and which either gets stashed abroad or finds it ways in the undervalued properties and gems and jewellery.

The Chamber is of the view that the discretion of the public authorities can be controlled by infusing extreme accountability in the system where the public authority would be liable to pay penalty/fine for any misuse of discretion.

iv. Import of gold and consumption in the country thereof:

India is the biggest consumer of gold in the world. The import of gold is on payment of hard earned foreign exchange while the sale of gold at the grassroots level is mainly in cash, leading to generation of huge black money. Therefore, there is an urgent need for a mechanism to curb it.

v. Tax Haven Countries:

One of the reasons of generation of black money is the easy parking of such funds in tax haven countries. Post-Independence India has passed through toughest tax laws and foreign exchange regulations. The extreme high rate of taxation, may it be income tax, excise duty, customs encourage and perforce more and more people to carry out the transactions outside the books of account and in the result generate black money. The black money so generated over the period has been parked either in the tax haven countries or the countries where the secrecy laws ensure that money so parked will not be detected.

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vi. Foreign Exchange Restrictions

The strict restriction on allowing foreign currency in case of need had also encouraged people to park funds outside the country in foreign currency so as to meet the requirements or the obligations may it for business, education, health and other personal purposes.

B. Post-liberalization, however, there have been substantial reforms in the taxation laws and the tax rates have been moderated to a reasonable level. The foreign exchange laws have also been liberalized so that one does not have much difficulty in obtaining foreign currency in case of need be, may it for business, education, health or for any other purposes. Thus, as on date there is not much incentive to park funds outside the country.

C. How to Bring Back the Money Parked Outside

The main issue is how to bring back the funds a substantial part of which got parked outside India during the pre-liberalization regime. The persons who have parked these funds outside India will not bring it back because of the penal actions which they may have to face. At the same time the Government cannot detect such funds in the absence of any information though discussions have been going on with the various countries and agreements have been entered into to exchange information under the Double Taxation Avoidance Agreements. Further the fact remains that such exchange of information will be perspective and practically as well as legally it will not be possible to get information about the past activities and the funds stashed away abroad in the past.

In view of these ground realities it will be prudent that Government of India opens a window so that the money can be brought back to India. In this context, following measures are suggested.

(I) ASSOCHAM is of the view that while opening this window it will be important to provide immunity to the person declaring such assets which

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can be in the form of bank deposit, investment in shares/debentures, mutual funds, property, etc.

(iii) The immunity needs to be provided under Direct Tax and Indirect Tax Laws, Companies Act, Foreign Exchange Management Act including Money Laundering Act etc

(iii) As regards the tax to be paid on such disclosure of money, the Chamber is of the view that a flat rate of 40% be levied on the present value of such money or the asset.

(iv) The cutoff date for valuation be fixed may be 1.1.2012 or 1.4.2012. Foreign currency and deposits to be valued by applying the notified exchange rate as on the valuation date.

(v) Further 30 % of the amount be asked to be invested in Infrastructure Bonds of 7 years tenure.

(vi) The funds so collected to be earmarked and used by the Government only for the development of the infrastructure.

(vii) This high rate of tax (at the rate of 40%) with further investment of 30 per cent in Infrastructure Bonds as compared to present maximum tax rate of 30% will help ensuring that there is no misuse of the scheme by unintended persons.

(viii) Further charging tax on the present value of the foreign assets by applying the current exchange rate will also ensure that this amnesty scheme is not exploited by unscrupulous people by converting black money in to white by paying nominal taxes

These two measures, the Chamber is of the view, will address all those issues which have arisen in the earlier voluntary disclosure scheme

ASSOCHAM while making this proposal of amnesty is conscious of the fact that tax evaders should not get go away and be shown any leniency. However,

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- at the same time the ground realities cannot be ignored. The fact remains that as on date it may not be possible to get hold of these persons who have stashed money abroad that is why the scheme is an invitation to these people to come forward and pay taxes.
- Further this scheme shall not be applicable in respect of those persons where the authorities have detected unaccounted money and proceedings have been initiated before the date when such scheme is notified.
- That the objective of this immunity scheme is to get back the money stashed abroad but considering the fact that there may be frequent cross and inter linked transactions and it may not be possible to isolate the investments with respect to foreign bank account or the foreign assets, the scheme be made open for money being kept abroad as well as in India.
- Further there may be instances where money remitted abroad has been utilized and not available for repatriation. As such there should be no insistence in such cases to bring money back.
- This window may be kept opened for a minimum period of six months.

ASSOCHAM is of the view that looking to the sensitive and the debate which has arisen in the last few years and the efforts being put in by the Government to collect information about the foreign assets help the public, there will be a large number of people who will like to come forward voluntarily and to make such disclosures and bring back the money in the country.

The Chamber is also of the view that if the above scheme is implemented in right earnest then a substantial part of the funds parked abroad for which the estimate ranges from few hundred billion dollars to few thousand billion dollars may get covered in the Scheme which will help the country not only to get its Revenue deficits but also help in meeting the Balance of Payment (BOP).

ASSOCHAM on its part assures that it will put all its efforts to make the scheme successful.

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ANNEX-A3

Gist of Feedback on Black Money from Public

1 a) Make stringent laws.

b) There should be community policing.

2 Those who are having accounts abroad must be given life imprisonment without mercy & delay!!

3 CCTV cameras 24 hours for all government officials - police/lawyers/judges/doctors/sales tax officers/MLAs/CMs/PM etc.

4 Minimize paper currency and increase electronic money (cards).

5 Strict laws and its strict implementation without distinction between prominent personalities/ politicians and ordinary people.

6 a) Strict law.

b) To convert all black money as national property.

c) Penalty - special tax.

7 a) Postal transactions using e-credits/online transactions.

b) Stop currency notes of Rs.500/- & Rs.1000/-.

8 Scrutinise the admission fees of private schools in Surat.

9 a) Reduce stamp duty, capital gains tax.

b) Make bonds always available for tax free investment at lucrative terms.

10 Politicians are corrupt.

11 a) Encourage online payments.

b) Integrate all land/property registrations/property tax payments/I.T. Department records/ Banks to assist digging out date and analysis to ascertain avoidance of tax.

12 Bring down corruption.

13 a) Declare black money as national property.

b) Detect and stop transfer of black money abroad.

c) Will require to unearth black money as it mostly belongs to politicians, bureaucrats and businessmen.

14 a) Declare black money as national money.

b) Guilty to be sent to jail for life time.

15 Confiscate black money obtained through bribery and corruption.

16 Implement strict rules and laws.

17 a) Declare black money as India's property.

b) Punish the guilty.

18 Penalise the guilty.

19 a) Attach properties procured from illegal money in India.

b) Declare them as assets of the country.

20 Politicians should declare their assets before elections as they are ones who have most black money.

21 a) Form a special team to unearth black money.

b) Encourage informers with 10% - 15% of total black money.

c) Severe punishment to the guilty.

d) Give a period to declare black money with no penalties on 50:50 basis.

e) Educate the children in schools about such subjects.

22 Income Tax system has failed.

23 a) Use CCTV in offices/authorise sting operations.

b) Punishment to the guilty.

24 Brought back black money to be used in reducing our foreign debt, loans etc. And extra if any, to be utilised for

a) Investment in education.

b) Investment in medical care for the poor.

c) Reduce oil prices.

25 To end corruption throw all Congressmen in jail and confiscate their property.

26 a) Fines and penalties to be most stringent.

b) An opportunity may be given to defaulters to bring back black money on 50:50 basis (government to collect 50% of the total black money and no penalty/punishment for a certain period.

27 Treat offenders as criminals/terrorists.

28 Black money should be brought back at all cost.

29 a) Black money to be traced and brought immediately.

b) Punishment to the guilty.

30 a) Get back all black money.

b) Improve our economy.

31 a) Declare black money as national property.

b) Harsh punishment to the guilty.

c) All assets purchased by black money be declared as national property.

32 Bring back black money without any penalty and then implement harsh laws to fight corruption.

33 Expose names of people who have black money.

34 Enact effective laws against black money and corruption.

35 Provide an opportunity one time free of penal action to bring back black money.

36 a) Create a special department to trace black money.

b) Grant 1% of black money as bonus to this department (to prevent it from being bribed).

c) Stringent penal laws to defaulters.

d) Mandatory jail term of one year.

37 If government acts and brings back black money in short period it will sent a strong message to the people.

38 a) Strong penal action against defaulters - passport impounded, properties attached.

b) All to be treated equally under the same applicable law.

39 a) Create awareness of negative effects of black money to public.

b) Give an opportunity to declare their black money.

40 a) Laws to handle corruption.

b) Govt. servants to be dismissed.

c) Create a national security number.

41 a) Black money in foreign banks to be declared as national property.

b) Pass a bill to bring back black money.

42 Imprisonment for ten years to defaulters.

43 a) If an Indian has an account in foreign bank and the balance is high - IT Department to be informed.

b) Strict laws and proceedings to be quick.

c) Politicians if defaulter - prevent from contesting elections

d) Employees - private and government - to be suspended.

44 a) Simplify procedures and all dealings.

b) Lower income Tax rates.

45 To cut short long drawn battle to bring back black money:

a) Tax exemption schemes for money brought back.

b) Some changes in FEMA act and rules.

46 a) Declare black money as national property.

b) Imprisonment for defaulters.

47 a) People dealing with black money issue to be honest. they should not cover up their black money.

b) Update the people of the developments.

48 Reduce stamp duty on house/flat registration.

49 a) People should disclose black money.

b) Black money should be taxed heavily.

50 Transactions relating to sale/purchase of real estate's should be monitored more closely and publication of guidance value/cost relating to real estate's on a weekly basis to a certain registration charges like in USA.

51 a) Declare black money as national asset and confiscate it immediately.

b) Offenders to be brought to book.

52 a) A stringent law and jail term for 10-20 years if committing such crime.

b) Separate speedy courts for such cases.

53 Stringent action against defaulters.

54 a) Declare black money as national asset through ordinance/law.

b) Constitute an independent monitoring agency to monitor and clean up the corrupt law enforcing agencies.

c) Punishment for offenders to act as deterrent.

d) Law enforcing agencies to be tech savvy and transparency required.

55 a) Include PM under Lokpal bill.

b) Celling/limit of wealth of politicians and all those related to them.

c) Limit the years to 10 years a person can be PM/CM.

56 a) Black money to be declared national asset.

b) 5 - 25 year's rigorous jail without parole.

c) All amounts to be recovered.

d) Law makers all tainted - trying to save themselves.

57 The Government should act without fear of people involved and make public their names.

58 a) To have an international law which would require permission of the country's government for deposit in foreign banks.

b) To spend the retrieved black money on infrastructure.

59 a) First assets of all politicians and government servants to declare if they and their families have Swiss accounts.

b) Black money to be deposited with Finance Ministry as 100% tax.

c) Minimum 10 years imprisonment.

60 Remove corruption black money will disappear.

61 a) Increase the work force of IT Department and conduct more raids.

b) Strict punishment.

62 Remedy is Lokpal bill.

63 a) Bring back black money and use it for welfare of public.

b) Strict action against defaulters/life imprisonment.

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64 a) Bring back black money and put it to right use.

b) Act swiftly.

c) Stringent punishment for defaulters.

65 a) A law to punish who takes bribe and not giver.

b) recover expenses related to recovery from defaulters.

c) Opportunity to defaulter to convert black money to white money.

66 Retrieved black money to be used to benefit farmers.

67 Remove Rs.500/- & Rs.1000/- notes.

68 a) Annual foreign currency accounts to be filed directly with Finance Ministry.

b) Indian currency to be made fully convertible.

c) A list of black money earners should be released periodically with action taken reports.

69 a) Threaten defaulters to sue them.

b) Create an economic wing in the RAW and have an officer attached at each embassy to track money inflows and outflows.

70 Defaulters to be declared anti-national and publicly hang them to death.

71 a) Reduce tax rates and tax spending instead of income.

b) President of India - powers to be given to lead the mission of bringing black money back.

c) Implement voluntary disclosure schemes.

d) Educate the young ones on the evils of corruption.

72 a) All transactions above Rs.50,000/- through bank only.

b) De-notify the Rs.500/- & Rs.1000/- currency notes.

c) Give discounts on online and bank transactions initially for encouragement.

TABLE-C1

Rank of select countries in
Corruption Perception Index, 2011.

Rank	Country	Score
64	South Africa	4.1
73	Brazil	3.8
75	China	3.8
95	India	3.1
143	Russia	2.4

Source: Transparency International (www.transparency.org)

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TABLE-C2

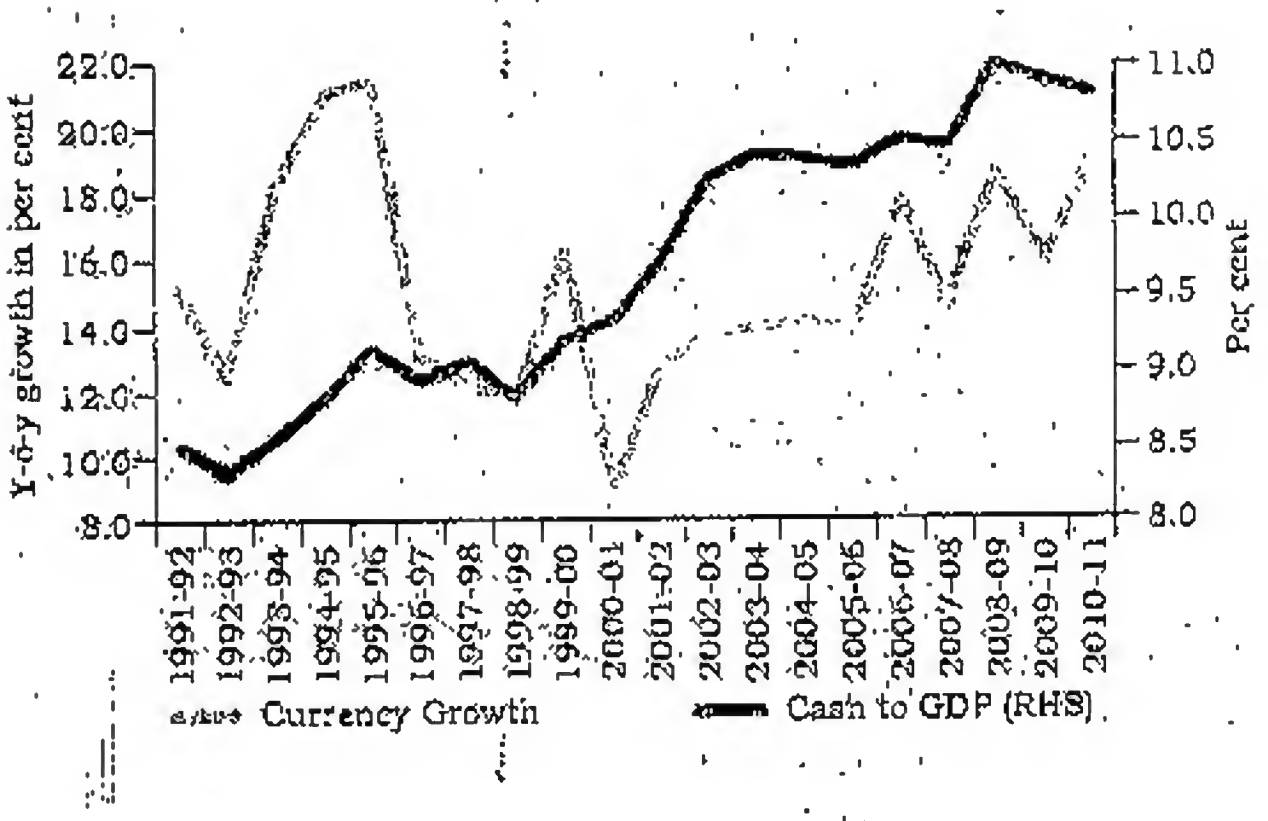
Ease of doing business ranking

Country	Ease of doing business (rank)	Starting a business	Dealing with construction permits	Getting Electricity	Registering property	Getting credit	Protecting investors	Paying taxes	Trading across borders	Enforcing contracts	Resolving insolvency
India	132	166	181	98	97	40	45	147	109	182	128
Brazil	126	120	127	51	124	98	79	150	121	118	136
China	91	151	179	115	40	87	97	122	60	16	75
South Africa	35	44	31	124	76	1	10	44	144	81	77
Russian Federation	120	111	178	183	45	98	111	105	160	13	60
Indonesia	129	155	71	161	99	126	46	131	39	156	146
U.S.A.	4	13	17	17	16	4	5	72	20	7	15
U.K.	7	19	22	60	68	1	10	24	13	21	6
Singapore	1	4	3	5	14	8	2	4	1	12	2

Source: http://www.doingbusiness.org/rankings (World Bank)

TABLE-C3

Growth in Currency and the Cash Economy



Source Annual Report of RBI – 2010-11

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TABLE-C4

Banknotes in Circulation

Denomination	Volume (Million pieces) End - March			Value (₹ crore) End - March		
	2009	2010	2011	2009	2010	2011
1	2	3	4	5	6	7
₹2 & ₹5	7,865	7,953	11,116	2,936	2,930	4,281
	(16.0)	(14.1)	(17.2)	(0.4)	(0.4)	(0.5)
₹10	12,222	18,536	21,288	12,222	18,536	21,288
	(25.0)	(32.8)	(33.0)	(1.8)	(2.4)	(2.3)
₹20	2,200	2,341	3,020	4,399	4,681	6,040
	(4.5)	(4.1)	(4.7)	(0.6)	(0.6)	(0.7)
₹50	4,888	4,211	3,196	24,440	21,057	15,980
	(10.0)	(7.4)	(5.0)	(3.6)	(2.7)	(1.7)
₹100	13,702	13,836	14,024	1,37,028	1,38,364	1,40,243
	(28.0)	(24.5)	(21.7)	(20.1)	(17.6)	(15.0)
₹500	6,156	7,290	8,906	3,08,304	3,64,479	4,45,311
	(12.6)	(12.9)	(13.8)	(45.3)	(46.2)	(47.6)
₹1,000	1,918	2,363	3,027	1,91,784	2,36,252	3,02,713
	(3.9)	(4.2)	(4.7)	(28.2)	(30.2)	(32.4)
Total	**48,953**	**56,549**	**64,577**	**6,81,133**	**7,88,299**	**9,35,856**

Note: Figures in parentheses represent percentage share in total.

Source Annual Report of RBI – 2010-11

TABLE-D1

Alternative Estimates of Black Income

(As per cent of GNP or GDP)

Year	Chopra's estimates		Gupta & Gupta's estimates	Gupta & Mehta's estimates	Ghosh et.al's estimates	Rangnekar's estimates
	"Wanchoo method"	"Own Method"				
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1970-71	4.8	5.2	22.3	--	7.6	--
1971-72	5.1	3.2	28.7	--	7.8	--
1972-73	4.0	3.8	31.9	--	7.8	--
1973-74	4.9	8.1	27.1	--	7.4	9.9
1974-75	5.9	12.4	20.9	13.8	8.1	9.3
1975-76	5.6	9.9	25.0	--	8.4	10.0
1976-77	5.7	10.2	37.6	--	8.7	11.3
1977-78	--	--	38.4	--	8.7	12.1
1978-79	--	--	48.1	19.8	--	13.5
1979-80	--	--	--	--	--	14.4

Source: Aspects of the Black Economy in India – Shanker Acharya (NIPFP)

TABLE-D2

Size of the Shadow Economy in 28 Asian Countries

Shadow Economy (in % of official GDP) using DYMIMIC and Currency demand method				
	Country	**1999-2000**	**2001-02**	**2002-03**
1	Bangladesh	35.6	36.5	37.7
2	Bhutan	29.4	30.5	31.7
3	Cambodia	50.1	51.3	52.4
4	Hong Kong	16.6	17.1	17.2
5	**India**	**23.1**	**24.2**	**25.2**
6	Indonesia	19.4	21.8	22.9
7	Iran	18.4	19.4	19.9
8	Israel	21.9	22.8	23.9
9	Jordan	19.4	20.5	21.6
10	Korea	27.5	28.1	28.8
11	Kuwait	20.1	20.7	21.6
12	Lebanon	34.1	35.6	36.2
13	Malaysia	31.1	31.6	32.2
14	Mongolia	18.4	19.6	20.4
15	Nepal	38.4	39.4	40.8
16	Oman	18.9	19.4	19.8
17	Pakistan	36.8	37.9	38.7
18	Papua New Guinea	36.1	37.3	38.6
19	Philippine	43.4	44.5	45.6
20	Saudi Arabia	18.4	18.1	19.7
21	Singapore	13.1	13.4	13.7
22	Sri Lanka	44.6	45.9	47.2
23	Syria	19.3	20.4	21.6
24	Taiwan	25.4	26.6	27.7
25	Thailand	52.6	53.4	54.1
26	Turkey	32.1	33.2	34.3
27	U.A.E.	26.4	27.1	27.8
28	Yemen Republic	27.4	28.4	29.1
	Average	**28.5**	**29.5**	30.4

TABLE-E1

List of DTAA countries as in 2009 (78)

Sl. No.	Country with which India has DTAA	Whether under renegotiation	Sl. No.	Country with which India has DTAA	Whether under renegotiation
1	Armenia	Yes	40	Morocco	Yes
2	Australia	Yes	41	Myanmar*	
3	Austria	Yes	42	Namibia	Yes
4	Bangladesh	Yes	43	Nepal	Yes
5	Belarus	Yes	44	Netherlands	Yes
6	Belgium	Yes	45	New Zealand	Yes
7	Botswana	Yes	46	Norway	Yes
8	Brazil	Yes	47	Oman	Yes
9	Bulgaria	Yes	48	Philippines	Yes
10	Canada	Yes	49	Poland	Yes
11	China	Yes	50	Portuguese Republic	Yes
12	Cyprus	Yes	51	Qatar	Yes
13	Czech Republic	Yes	52	Romania	Yes
14	Denmark	Yes	53	Russia	Yes
15	Egypt	Yes	54	Saudi Arabia	Yes
16	Finland	Yes	55	Serbia	Yes
17	France	Yes	56	Singapore	Yes
18	Germany	Yes	57	Slovenia	Yes
19	Greece	Yes	58	South Africa	Yes
20	Hungary	Yes	59	Spain	Yes
21	Iceland*		60	Sri Lanka	Yes
22	Indonesia	Yes	61	Sudan	Yes
23	Ireland	Yes	62	Sweden	Yes
24	Israel	Yes	63	Swiss Confederation	Yes
25	Italy	Yes	64	Syria	Yes
26	Japan	Yes	65	Tajikistan*	
27	Jordon	Yes	66	Tanzania	Yes
28	Kazakhstan	Yes	67	Thailand	Yes
29	Kenya	Yes	68	Trinidad and Tobago	Yes
30	Korea	Yes	69	Turkey	Yes
31	Kuwait	Yes	70	Turkmenistan	Yes
32	Kyrgyz Republic	Yes	71	UAE	Yes
33	Libya	Yes	72	Uganda	Yes
34	Luxembourg	Yes	73	UK	Yes
35	Malaysia	Yes	74	Ukraine	Yes
36	Malta	Yes	75	USA	Yes
37	Mauritius	Yes	76	Uzbekistan	Yes
38	Mongolia	Yes	77	Vietnam	Yes
39	Montenegro	Yes	78	Zambia	Yes

* The three countries, i.e. Iceland, Tajikistan and Myanmar already have the specific provision and hence, remaining 75 countries were taken up for renegotiation.

TABLE-E2

A. Status of old DTAAs

No of countries with whom DTAAs were in force in 2009.	No of countries with whom we are negotiating article allowing for exchange of banking information along with names	No of countries with whom these renegotiations are finalized and signed along with names	No of the countries with which revised agreement signed and entered into force
Total 78 (see the list attached). Out of these, 3 DTAAs already had specific provision for exchange of banking information	Total 75 (In the list of 78 countries, three countries, i.e. Iceland, Tajikistan and Myanmar already have the specific provision and hence, remaining 75 countries were taken up for renegotiation	Negotiation finalized: 28 Armenia, Australia, Bangladesh, Brazil, Finland, France, Indonesia, Kenya, Luxembourg, Malaysia, Malta, Morocco, Nepal, Netherlands, Norway, Romania, Singapore, Sri Lanka, South Africa, Spain, Sweden, Switzerland, Tanzania, Thailand, United Kingdom, UAE, Uzbekistan, Zambia	Signed (7): Australia, Finland, Nepal, Norway, Singapore, Switzerland and Tanzania Entered into force(5): Finland, Luxembourg, Singapore, Switzerland and Tanzania

B. Status of New DTAAs since 2009

No of countries with whom negotiation for new DTAAs have been completed	No of new DTAAs signed	No of new DTAAs entered into force
Total 19 Albania, Bhutan, Chile, Croatia, Colombia, Estonia, Ethiopia, Fiji Georgia, Hong Kong, Iran, Latvia, Lithuania, Mexico, Mozambique, Senegal, Taiwan, Uruguay, Venezuela,	Signed(9): Colombia, Ethiopia, Georgia, Mexico, Mozambique, Lithuania, Taiwan, Uruguay, Estonia,	Entered into force(4): Georgia, Mexico, Mozambique, Taiwan

C. Total DTAAs in force as on date

82 DTAAs - 78 above plus four more new DTAAs (with Georgia, Mexico, Mozambique and Taiwan)

TABLE-E3

STATUS OF TAX INFORMATION EXCHANGE AGREEMENTS

No of countries with whom TIEAs are being negotiated along with names	No of countries with whom TIEA negotiations are finalised along with names	No of countries with whom TIEA have been signed along with names
Total 22 (Argentina, Bahrain, Bermuda, Bahamas, British Virgin Islands, Cayman Islands, Congo, Costa Rica, Gibraltar, Guernsey, Isle of Man, Jersey, Liberia, Liechtenstein, Macau, Maldives, Marshall Islands, Monaco, Netherland Antilles, Panama, Saint Kitts & Nevis, Seychelles)	**Total 17** (Argentina, Bahamas, Bahrain, Bermuda, British Virgin Islands, Cayman Islands, Congo, Costa Rica, Gibraltar, Guernsey, Isle of Man, Jersey, Liberia, Macau, Marshall Islands, Monaco, Saint Kitts & Nevis)	**Signed (10):** Argentina, Bahamas, Bermuda, British Virgin Islands, Cayman Islands, Guernsey, Isle of Man, Jersey, Liberia and Macua **Entered into force(5):** Bahamas, Bermuda, British Virgin Islands, Cayman Islands and Isle of Man

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TABLE-F1

Act	Section	Offence	Maximum	Minimum
NDPS Act 1985	15	Punishment for contravention in relation to poppy straw	Small quantity - up to 6 months or fine up to Rs. 10,000 or both. More than small quantity but less than commercial quantity - up to 10 years + fine up to Rs. 1 Lakh. Commercial quantity - 10 to 20 years + fine Rs. 1 to 2 Lakhs	
	16(c), 20, 16	Cultivation of opium, cannabis or coca plants without licence	Rigorous imprisonment-up to 10 years + fine up to Rs. 1 lakh	
	19	Embezzlement of opium by licensed farmer	Rigorous imprisonment -10 to 20 years + fine Rs. 1 to 2 lakhs	
	17, 18, 20, 21 and 22	Production, manufacture, possession, sale, purchase, transport, import / export inter-state or use of narcotic drugs and psychotropic substances	Small - up to 6 months or fine up to Rs. 10,000 or both. More than small - up to 10 years + fine up to Rs. 1 Lakh. Commercial quantity - Rigorous imprisonment 10 to 20 years + fine Rs. 1 to 2 Lakhs	
	23	Import, export or transhipment of narcotic drugs and psychotropic substances	Small - up to 6 months or fine up to Rs. 10,000 or both. More than small - up to 10 years + fine up to Rs. 1 Lakh. Commercial quantity - 10 to 20 years + fine Rs. 1 to 2 Lakhs	
	24	External dealings in NDPS	10 to 20 years + fine of Rs. 1 to 2 lakhs	
	25	Knowingly allowing one's premises to be used for committing an offence	Same as for the offence	
	25A	Violations pertaining to controlled substances	Up to 10 years + fine Rs. 1 to 2 lakhs	
	27A	Financing traffic and harbouring offenders	10 to 20 years + fine Rs. 1 to 2 lakhs	
	28; 29	Attempts, abetment and criminal conspiracy	Same as for the offence	
	30	Preparation to commit offence	Half the punishment for the offence	
	31; 31A	Repeat offence	One and half times. Death penalty in some cases.	
	27, 64A	Consumption of drugs; Immunity	Cocaine, morphine, heroin - up to 1 year or fine up to Rs. 20,000 or both. Other drugs - up to 6 months or fine up to Rs. 10,000 or both.	
	32	Punishment for violations not elsewhere specified	Imprisonment up to six months or fine or both	

Act	Section	Offence	Maximum	Minimum
Customs Act 1962	132	False declaration, false documents, etc	Up to two years, or with fine, or with both.	
	133	Obstruction of officer of customs	Up to two years, or with fine, or with both.	
	134	Refusal to be X-Rayed	Up to six months, or with fine, or with both	
	135	Evasion of duty or prohibitions	Up to seven years and with fine	1 year
	136	Offences by officers of customs	Up to three years, or with fine, or with both	
Central Excise Act 1944	9	Evasion of duty	Up to seven years and with fine	3 years or with fine or with both
PMLA 2002	4	Punishment for Money-Laundering	7 years with fine up to Rs.5 lakhs	3 years
		Offence in Para 2 Part A of Schedule	10 years with fine up to Rs.5 lakhs	3 years
PC Act 1988	7	Public servant taking gratification other than legal remuneration in respect of an official act	Up to five years and fine	6 months
	8	Taking gratification, in order, by corrupt or illegal means, to influence public servant	Up to five years and fine	6 months
	9	Taking gratification, for exercise of personal influence with public servant	Up to five years and fine	6 months
	10	Punishment for abetment by public servant of offences defined in section 8 or 9	Up to five years and fine	6 months
	11	Public servant obtaining valuable thing, without consideration from person concerned in proceeding or business transacted by such public servant	Up to five years and fine	6 months
	12	Punishment for abetment of offences defined in section 7 or 11	Up to five years and fine	6 months
	13	Criminal misconduct by a public servant	Up to seven years and fine	1 year
	14	Habitual committing of offence under section 8, 9 and 12	Up to seven years and fine	2 years
	15	Punishment for attempt	Up to three years and fine	

TABLE-F2.

Existing and proposed minimum and maximum punishments under economic laws

		PRESENT IMPRISONMENT			PROPOSED	
		Maximum	Minimum	Death	Maximum	Minimum
1	Income Tax Act	7	0		7	3 months
2	Wealth Tax Act	7	0		7	3 months
3	Customs Act	7	0		7	3 months
4	Central Excise Act	7	0		7	3 months
5	P C Act	7	0		10	6 months
6	PML Act	10	3		No change	No change
7	NDPS Act	20	0	Yes*	Life Imprisonment	6 months

NOTES

* For second conviction punishable with 10-20 years imprisonment.

1. Imprisonment is in years, unless otherwise mentioned.

2. There should be no provision of death sentence for economic offences.

ANNEX-G1

Proposed amendments in the tax law introduced in the Finance Bill 2012 aimed at curbing tax evasion and reducing black economy –

(i) Unexplained cash credits / investments / expenditure, etc., under section 68, 69, 69A, 69B, 69C and 69D – ***Part I, Chapter VI, Para 6; Part II, Page 9, Para 3.42***

(ii) Compulsory filing of income tax return in relation to assets located outside India – ***Part II, Page 19, Para 12.8***

(iii) Reassessment of income in relation to any asset located outside India – ***Part I, Chapter VI, Para 6.48; Part II, Page 19, Para 12.4***

(iv) Penalty on undisclosed income found during the course of search – ***Part I, Chapter VI, Para 6***

(v) Expediting prosecution proceedings under the Act – ***Part I, Chapter VI, Para 6.44***

(vi) Definition of Commissioner to include Director – ***Part II, Page 8, Para 3.40***

(vii) Prohibition of cash donations in excess of ten thousand rupees – ***Part I, Chapter III, Para 3.42; Part II, Page 5, Para 3.16***

(viii) Share premium in excess of the fair market value to be treated as income – ***Part II, Page 6, Para 3.24***

(ix) Tax Collection at Source (TCS) on cash sale of bullion and jewellery - ***Part I, Chapter VI, Para 6.21***

(x) Income deemed to accrue or arise in India – ***Part II, Page 20-21, Para 12.10.3 & 12.10.4***

(xi) Taxation of a non-resident entertainer, sports person etc. – ***Part II, Page 19, Para 12.6***

(xii) Tax Residence Certificate (TRC) for claiming relief under DTAA – ***Part II, Page 21, Para 12.10.4***

(xiii) Extension of time limit for completion of assessment or reassessment where information is sought under a DTAA– ***Part I, Chapter VI, Para 6.48; Part II Page 19, Para 12.5***

(xiv) Advance Pricing Agreement (APA) – ***Part II, Page 18, Para 12.2***

(xv) Filing of return of income, definition of international transaction, tolerance band for ALP, penalties and reassessment in transfer pricing cases – ***Part I, Chapter VI, Para 6***

(xvi) General Anti-Avoidance Rules (GAAR) – ***Part II, Page 18, Para 12.3***

(xvii) Customs duty on gold import enhanced from 2% to 4% – ***Part I, Chapter VI, Para 6.20***

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ANNEX-G2

LIST OF PAST CHAIR / CO-CHAIR & MEMBERS OF THE COMMITTEE

CHAIR

SHRI SUDHIR CHANDRA, CBDT

SHRI PRAKASH CHANDRA, CBDT

SHRI MUKESH CHAND JOSHI, CBDT

CO-CHAIR

SHRI SATYENDRA SINGH RANA, CBDT

MEMBERS

SHRI ARUN MATHUR, ED

SHRI AMITABH RAJAN, ED

SHRI RAKESH SINGH, ED

SHRI R K SRIVASTAVA, MOL

SMT SHARDA JAIN, MOL

ABBREVIATIONS USED

ASSOCHAM The Associated Chambers of Commerce and Industry of India
AG Accountant General
AS Accounting Standards
BRICS Brazil, Russia, India, China & South Africa
C&AG Comptroller and Auditor General of India
CBDT Central Board of Direct Taxes
CBEC Central Board of Excise & Customs
CBI Central Bureau of Investigation
CEIB Central Economic Intelligence Bureau
CENVAT Central value Added Tax
CIB Central Information Branch
COIN Customs Overseas Intelligence Network
CPC Civil Procedure Code
Cr PC Criminal Procedure Code
CTR Cash Transactions Report
CVC Central Vigilance Commission
DARTTS Data Analysis & Research for Trade Transparency System
DCI Directorate of Criminal Investigation
DEPB Duty Entitlement Pass Book
DFIA Duty Free Import Authorization
DGCEI Directorate General of Central Excise Intelligence
DGIT Director General of Income Tax
DRI Directorate of Revenue Intelligence
DoC Directorate of Currency
DYMIMIC Dynamic-Multiple Indicators Multip'e-Causes
ED Directorate of Enforcement
EIC Economic Intelligence Council
FATF Financial Action Task Force
FCRA Foreign Contribution Regulation Act
FEMA Foreign Exchange Management Act
FICCI Federation of Indian Chambers of Commerce and Industry
FICN Fake Indian Currency Note
FII Foreign Institutional Investor
FINnet Financial Intelligence Network
FIU-IND Financial Intelligence Unit- India
FLETC Federal Law Enforcement Training Center
FMC Forward Market Commission
FRBM Fiscal Responsibility and Budget Management Act
FTA Free Trade Agreements
FT&TR Foreign Tax & Tax Research

ABBREVIATIONS USED

ICAI Institute of Chartered Accountants of India
IRDA Insurance Regulatory and Development Authority
IPC Indian Penal Code
GDP Gross Domestic Product
GST Goods and Service Tax
HQ Head Quarter
HSN Harmonized System of Nomenclature
KYC Know Your Customer
L&C Legislation & Computerization
MHA Ministry of Home Affairs
MLAT Mutual Legal Assistance Treaties
MGNREGS Mahatma Gandhi National Rural Employment Guarantee Scheme
NAS National Accounting System
NCAER National Council of Applied Economic Research
NCB Narcotics Control Bureau
NDPS Narcotic Drugs and Psychotropic Substances Act
NIFM National Institute of Financial Management
NIPFP National Institute of Public Finance and Policy
NOC No Objection Certificate
NPO Non-Profit Organisation
PAN Permanent Account Number
PMLA Prevention of Money Laundering Act
PN Participatory Note
PTA Preferential Trade Agreements
RBI Reserve Bank of India
RI Rigorous Imprisonment
SEBI Securities and Exchange Board of India
SFIO Serious Frauds Investigating Office
STR Suspicious Transactions Report
TBML Trade Based Money Laundering
TIEA Tax Information Exchange Agreements
TRAI Telecom Regulatory Authority of India
TTU Trade Transparency Unit
UID Unique Identity
UNCAC United Nations Convention Against Corruption
URD Un-registered dealers
VAT Value Added Tax
VKGUY Vishesh Krishi Gram Upaj Yojana
WGC World Gold Council

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ANNEXURE R/35

Search and seizure action taken by Enforcement Directorate on 01.04.2017 on Shell Companies

Intelligence / information was received that shell companies are being used for undesirable financial activities such as conversion of undisclosed cash into share capital / loans, layering of transactions, deposit of old demonetization currency into bank accounts during the demonetization period and subsequent routing thereof for purchase of bullion, etc. In order to proceed further, inputs were sought from CBDT and SFIO as regards names and addresses of shell companies which are presently undertaking such activities. In response an e-mail was received from CBDT which contained a document running into more than 5000 pages which contained information about action taken by CBDT in cases of shell companies operating from Kolkata. The said information related to action taken more than 3-4 years earlier and thus did not appear to have much current relevance. Details about one Chartered Accountant in Delhi who was running a number of shell companies was received from SFIO which was analysed and acted upon by Enforcement Directorate.

II. The Directorate, during various ongoing investigations had come across various companies which were used with the objective to conceal the nature, origin, or destination of misappropriated funds by concealing the beneficiary owner or proceed of crime generated out of corruption, fraud and other such crimes. Cases of foreign outward remittances of dubious nature by certain companies had also been detected. In order to investigate further, Enforcement Directorate conducted nationwide searches on 1st April, 2017 in the cases of shell companies. Searches have also been carried out in the cases of related professionals who are the brain behind creation and operation of such shell companies. These searches were conducted in respect of around 1000 companies at 134 premises across 16 states in India under FEMA & PMLA. A detailed report on these searches in a tabulated manner is enclosed herewith.

III: On the basis of searches / enquiries conducted in respect of shell companies, the important findings noticed are as under:

1. Many of the companies were not running / operating from the addresses in the records indicating that the companies have been registered with fictitious addresses. In some cases, a number of Shell Companies are running from a small room and no documents were found related to running of the said companies during search

2. No business activities were observed at the given premises instead premises were being used for some other purposes such as godowns, residences, etc.

3. Shell companies have also been used to deposit of demonetised notes in crores of rupees during demonetization period.

4. In some cases, the shell companies have still been shown operating from the addresses even if the lease agreements have already expired of the given addresses. Change of addresses by Shell Companies is not brought into the notice of concerned authorities.

5. In one specific case, Shri Jagdish Prasad Purohit is controlling /operating more than 700 companies through his family members, relatives and employees, search was conducted at his residence. Shri Jagdish Purohit had also given accommodation entries to other companies in crores of rupees.

6. Shell Companies are controlled by persons who are not on the Board of Directors. Most of the Directors are on the board of the company as dummy directors and have no knowledge about the working of the company. They sign balance sheets and other documents etc. on the instructions of some other persons.

7. It is noticed that some professionals like CAs and CSs are also providing assistance in running of shell companies. They prepare and file the financial statements of these shell companies to meet the regulatory requirements of different Agencies / Institutions. In one case, one CA signed the Balance Sheets and Profit & Loss Accounts of about 800 Pvt. Ltd. companies.

8. In some cases, modus operandi of sending out foreign exchange in the guise of advance remittance for import of goods by some shell companies has been noticed. For this purpose, these companies have rented a flat locally. After sending out the remittances, they have vacated the premises and their whereabouts are not known.

9. In some other cases, the companies have not realised export proceeds and requested RBI for write-off the said amount without any valid reasons. Therefore, it appears that funds have been parked abroad in the guise of export.

10. Shell companies are also used to receive cash from the beneficiaries to be deposited in the group companies. Afterwards, monies are routed through a web of companies formed by the operator or a set of operators for layering and ultimately money in the form of RTGS/banking transactions is transferred to the beneficiaries.

11. In certain cases, there are two sets of concerns, one that needs cash in lieu of cheque i.e. entities wanting to siphon off funds in the garb of expenses and the others who need cheques in lieu of cash. The monies are transferred in the guise of genuine business transactions

12. Addresses of many shell companies have been found to be non-existent. Banks should verify the addresses properly before opening accounts for any company.

13. Use of fake bills of entry/ inflated bills of entry for transfer of funds from India to countries like Hong Kong and Dubai. Large funds are being transferred in such cases. It is very alarming trend threatening financial stability of the country.

14. Use of Cooperative Credit societies for cash deposits by individuals and transfer of these monies to the accounts of other shell companies. By this way, cash deposit is masked and does not come to the notice of investigating agencies. RBI should regulate these societies more closely.

15. Shell Companies are also used for round tripping in order to avoid service tax and local duties on one hand and enjoy export incentives on another.

16. No due diligence by banks is done in respect of physical possession and title of land taken as collateral.

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ANNEXURE-R/36

[redacted]

This Report for the year ended March 2010 has been prepared for submission to the President under Article 151(1) of the Constitution of India.

Audit of Revenue Receipts – Direct Taxes of the Union Government is conducted under section 16 of the Comptroller and Auditor General of India (Duties, Powers and Conditions of Service) Act, 1971.

The Report presents the results of audit of receipts under direct taxes comprising Corporation Tax, Income Tax, Fringe Benefit Tax and Wealth Tax and is arranged in the following order: -

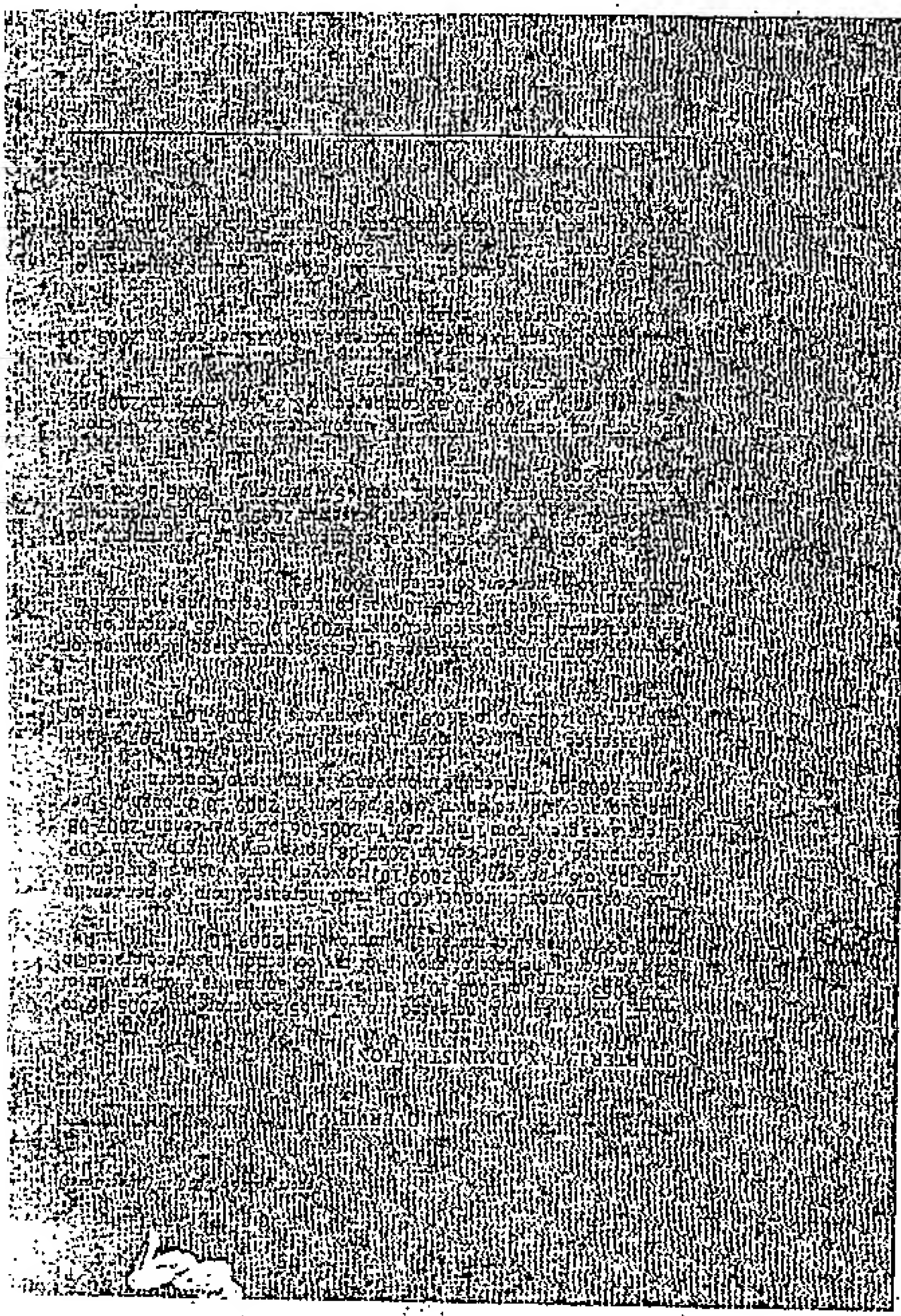
(i) Chapter I: on tax administration;

(ii) Chapter II: on audit impact of direct taxes and mentions the results thereof;

(iii) Chapter III: on our findings on assessments of Corporation Tax;

(iv) Chapter IV: on our findings on assessments of Income Tax in Part A, Fringe Benefit Tax in Part B and Wealth Tax in Part C.

The cases included in this Report are the results of audit conducted during 2009-10 and in earlier years which could not be covered in the previous reports.



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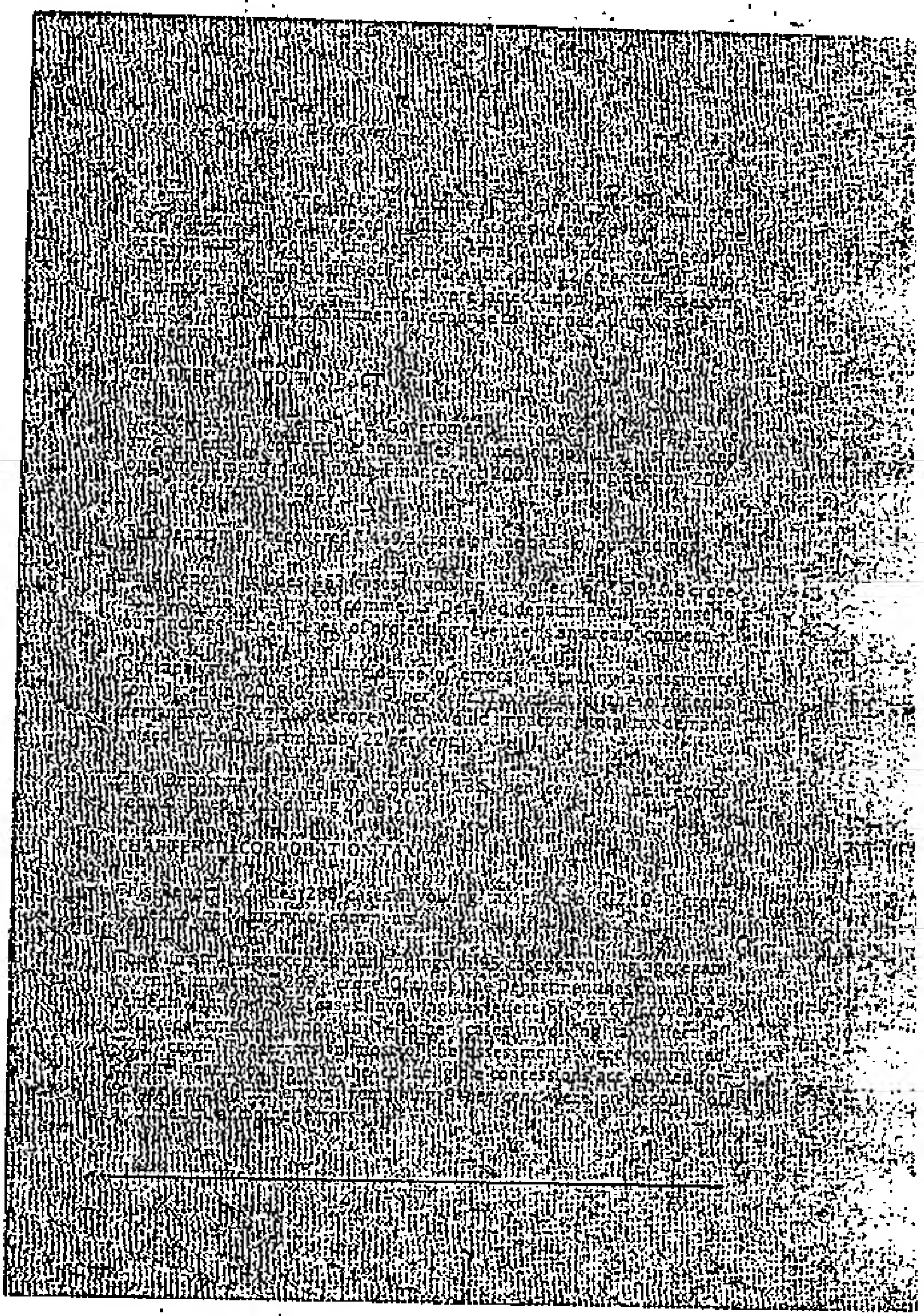

CHAPTER IA

PART A—INCOME TAX

PART B—FRINGE BENEFIT TAX

PART C—WEALTH TAX

CHAPTER I

TAX ADMINISTRATION

- Direct tax collections increased from ₹ 1,65,216 crore in 2005-06 to ₹ 3,78,063 crore in 2009-10 at an average annual rate of growth of 32.2 *per cent*.

(Paragraph 1.3)

- In 2009-10, for every unit growth in GDP, direct taxes grew by 0.8 *per cent* only. Thus, the acceleration in tax collection was less sharper than that of GDP in 2009-10. The buoyancy improved as compared to 2008-09 when it was 0.5 *per cent*.

(Paragraph 1.3.1)

- The total number of direct tax assessees increased by 14.4 *per cent* in 2009-10 to 340.9 lakh as compared to 297.9 lakh taxpayers in 2005-06. The growth path has been fluctuating as it registered a decline of 3 *per cent* in 2008-09, with the decline being sharper for corporate assessees. However, in 2009-10 there has been a marginal increase of 4 *per cent*.

(Paragraph 1.4)

- 82.8 *per cent* of the collections came in by way of voluntary compliance in 2009-10.

(Paragraph 1.6)

- The pendency of scrutiny assessment cases increased from 45.7 *per cent* in 2005-06 to 50.7 *per cent* in 2009-10.

(Paragraph 1.7)

- Cost of collection rose to 0.73 *per cent* in 2009-10 from 0.55 *per cent* in 2007-08.

(Paragraph 1.10)

- Internal Audit completed 69.8 *per cent* of the targeted audits. Only 12.6 *per cent* of major findings raised by Internal Audit were acted upon by the assessing officers in 2009-10. Departmental response to Internal Audit was clearly inadequate.

(Paragraph 1.13)

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[redacted]

1.1 Introduction

1.1.1 Direct taxes levied by the Parliament mainly comprise:

- **Corporation tax** on companies which constitutes 64.7 *per cent* of direct tax collection[1]. The corporates also pay **Wealth tax** on the assets owned by them. In addition, tax is payable on **capital gains** made on the sale of assets.

- **Personal Income tax** which is required to be paid if the income level reaches above ₹ 1.60 lakh[2].

1.1.2 Other direct taxes include **Fringe Benefit tax**[3], **Securities Transactions tax**[4] and **Wealth tax**[5] etc.

1.2 The organizational structure of the Income-Tax Department is at Appendix-1. Table 1.1 provides a snapshot of tax administration.

[redacted]					
2. Refunds	30,032	37,235	41,205	39,097	57,101
4. Tax-GDP Ratio	4.6	5.6	6.6	6.3	6.1
6. No. of assessees (in lakh)	297.9	312.9	336.6	326.5	340.9
8. Returns filed (in lakh)	297.9	312.9	336.6	326.5	340.9
10. Post-assessment collection	37,086	50,891	52,865	56,168	73,053
12. No. of scrutiny assessments completed	2,30,698	2,41,983	4,07,239	5,38,505	4,29,585
14. Direct refund claims pending (in lakh)	5.7	4.4	8.3	15.5	19.4
16. Demand pending	95,387	1,17,370	1,24,274	2,01,276	2,29,032
18. Certified demand recovered	4,433.0	8,521.4	8,612.6	4,035.8	3,322.3
20. Cost of collection	1,240	1,343	1,713	2,286	2,774

The details of tax administration are given in Appendix-2.

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[1] for the financial year 2009-10

[2] The base above which income tax is payable is revised from time to time. It is ₹ 1.6 lakh for the AY 2010-11 (₹ 1.9 lakh in case of resident women and ₹ 2.4 lakh in case of resident sr. citizens).

[3] Tax on the value of certain benefits offered by the employers to their employees. Fringe Benefit Tax is abolished from the assessment year 2011-12 onwards

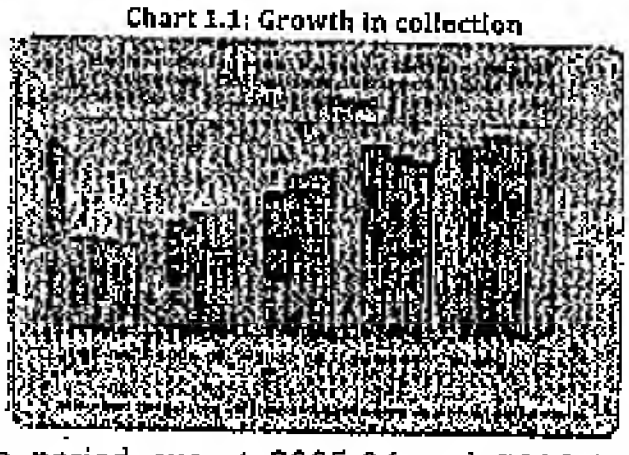
[4] Tax on the value of taxable securities purchased and sold through a recognized stock exchange in India.

[5] Tax chargeable on the net wealth comprises certain assets specified under section 2(ea) of the Wealth Tax Act.

[6] Tax buoyancy is measured by the ratio of percentage change in tax revenue to percentage change in GDP.

1.3 GROWTH IN COLLECTION

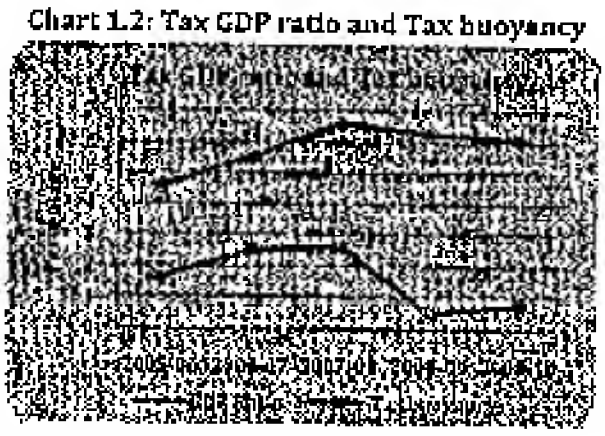
Chart 1.1: Growth in collection



There has been a robust growth in collection of direct taxes in the last five years, as it increased from ₹ 1,65,216 crore in 2005-06 to ₹ 3,78,063 crore[7] in 2009-10 at an average annual rate of growth of 32.2 *per cent*. The collections exceeded the budget estimates during the period except 2005-06 and 2008-09. (Chart 1.1). The rate of growth of tax collection has decelerated particularly in 2008-09 and has since marginally improved in 2009-10. There was deviation in actual collections with reference to budget estimates during 2006-07 to 2008-09 as the actual collection deviated by 8.5 *per cent* to 16.7 *per cent* of the budget estimates. However, revised estimates were found realistic during the period 2005-06 to 2009-10 as the collection was within 3.2 *per cent* of the revised estimates.

1.3.1 TAX-GDP RATIO AND TAX BUOYANCY

Chart 1.2: Tax GDP ratio and Tax buoyancy



Tax-Gross Domestic Product (GDP) ratio increased from 4.6 *per cent* in 2005-06 to 6.1 *per cent* in 2009-10. However, there was a slight decline as compared to 6.6 *per cent* in 2007-08. For every unit growth in GDP, direct taxes grew from 1.7 *per cent* in 2005-06 to 2.6 *per cent* in 2007-08. However, the trend of buoyancy slowed down steeply to 0.8 *per cent* in 2009-10 through 0.5 per cent in 2008-09 (Chart 1.2). Buoyancy value less than 1 is not a healthy indicator given the overall growth in the GDP. The sharp decline in buoyancy is a matter of concern.

1.3.2 The total direct tax collection has increased by 128.8 *per cent* from ₹ 1,65,216 crore in 2005-06 to ₹ 3,78,063 crore in 2009-10 whereas total GDP has increased by 74.0 *per cent* from ₹ 35,80,344 crore in 2005-06 to ₹ 62,31,171 crore in 2009-10 indicating a significantly higher growth rate of tax collection over five years period. However, in the recent past i.e. 2008-09 and 2009-10 the

[7] Head wise/State/UT wise break up of direct tax collections is given in Appendix-3.

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rate of growth of tax collection has decelerated particularly in 2008-09 and thereafter marginally improved in 2009-10. At the same time, revenue foregone[8] on account of tax exemptions has increased by 150.1 *per cent* from ₹ 48,168 crore in 2005-06 to ₹ 1,20,483 crore in 2009-10 impacting the growth of tax collection.

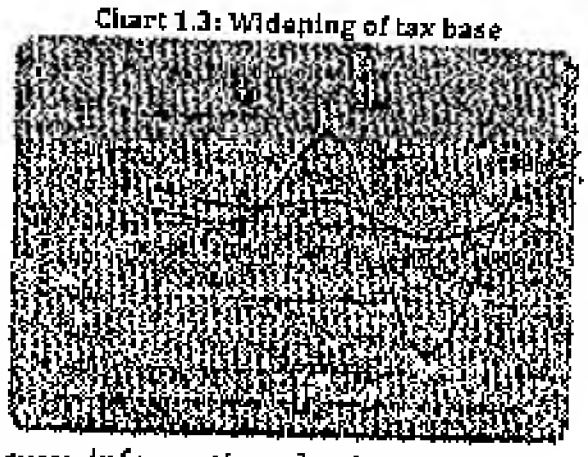
1.4 Consolidating the Tax Base

Analysis of the tax base is essential to establish that all the assesses are in the tax net and that the tax due is deposited by these assesses.

1.4.1 Widening of Tax Base

The assessee base grew over the last five years from 297.9 lakh taxpayers in 2005-06 to 340.9 lakh taxpayers in 2009-10 at the rate of 14.4 *per cent* (Chart 1.3).

Chart 1.3: Widening of tax base



The Department has different mechanisms available to enhance the assessee base which include inspection and survey, information sharing with other tax departments and third party information available in annual information returns. Automation also facilitates greater cross linking[9]. Most of these mechanisms are available at the level of the assessing officers. The Department needs to holistically harness these mechanisms at macro level to analyse the gaps in the assessee base.

Permanent Account Numbers (PANs)[10] issued upto March 2009 and March 2010 were 807.9 lakh and 958 lakh respectively. The returns filed in 2008-09 and 2009-10 were 326.5 lakh and 340.9 lakh respectively. The gap between PANs and the number of returns filed was 617.1 lakh in 2009-10. The Board needs to identify the reasons for the gap and use this information for appropriately enhancing the assessee base. The gap may be due to issuance of duplicate PAN cards and death of some PAN card holders. The Department needs to put in place appropriate controls to weed out the duplicate PANs and also update the position in respect of deceased assessees. It is significant to

[8] Tax incentives to promote savings by individuals and various incentives/exemptions to corporate as well as non-corporate sectors

[9] Information about non-filers of TDS returns from e-TDS, Annual comparative figures of TDS deposited by big corporate & non-corporate deductors, linking TAN data in order to ensure better compliance from them, linking tax returns with the PAN data base and linking return submitted by deductors on TDS deductions with the returns of the deductee

[10] The Permanent Account Number (PAN) allotted as a taxpayer, is the unique identification number that helps track individual tax compliance. It is issued by the department, but the front-end of the process has been outsourced to UTI Technology Services Ltd. (UTITSL) and the National Securities Depository Ltd. (NSDL) with effect from 1 July 2003.

note that the number of PAN card holders has increased by 117.7 *per cent* between 2005-06 to 2009-10 whereas the number of returns filed in the same period has increased by 14.4 *per cent* only.

The total direct tax collection has increased by 128.8 *per cent* during the period 2005-06 to 2009-10. The increase in tax collection was around nine times as compared to increase in the assessee base. It should be the constant endeavour of the Department to ensure that the entire assessee base, once correctly identified is duly meeting the entire tax liability. However, no assurance could be obtained that the tax liability on the assesses is being assessed and collected properly. This comment is corroborated in para 2.4.1 of Chapter 2 of this report where we have mentioned about our detection of undercharge of tax amounting to ₹ 12,842.7 crore in 19,230 cases audited during 2008-09. However, given the fact that our is a test audit, Department needs to take firm steps towards strengthening the controls available on the existing statutes towards deriving an assurance on the tax collections.

1.4.2 Reconciliation of corporate assessees

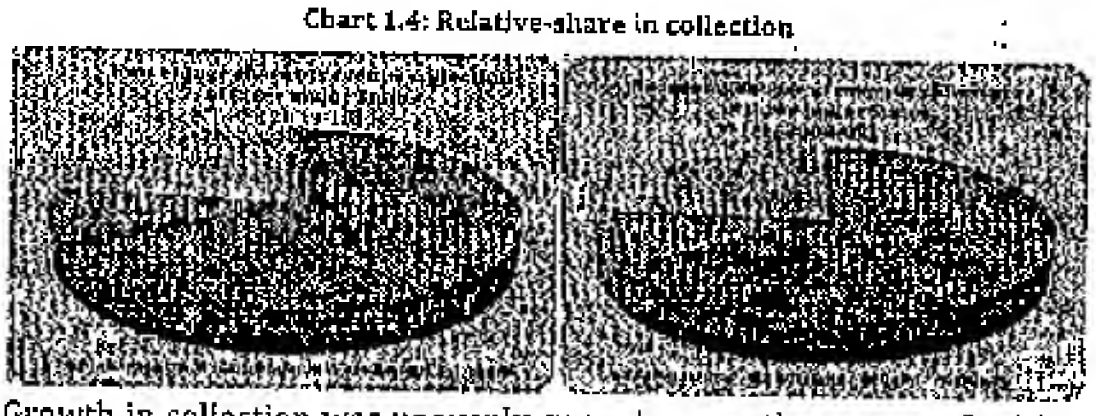
There were 8.4 lakh working companies[11] in the country registered with Registrar of Companies (ROC) as on 31 March 2010. However, the corporate assessees on the Income-Tax Department's records are only 3.7 lakh, leaving an un-reconciled list of 4.7 lakh companies. The difference has increased from 3.4 lakh in 2005-06. It had been marginally reconciled in 2007-08 (2.8 lakh). The Board should reconcile the discrepancy for accurate assessment of the filing gap.

1.5 Relative share in collection

The three major States (Chart 1.4) of Maharashtra, Karnataka and West Bengal had contributed more than 3/4th of total direct tax collection in 2009-10; in 2008-09, the three major states who had contributed more than 3/4th of total direct tax collection were Maharashtra, Karnataka and Delhi. West Bengal registered increase of 31.5 *per cent* in collection while Maharashtra and Karnataka registered increase of around 16 *per cent* in collection over the previous year. On the other hand Delhi registered 15.3 *per cent* decline in collection in 2009-10 over the previous year. The reasons for decline in collection need to be examined.

[11] Source: Ministry of Corporate Affairs (MCA Division).

Chart 1.4: Relative-share in collection



Growth in collection was unevenly spread across the country. Positive growth in tax collection was reported in 16 states[12] in 2009-10 vis-a-vis 2008-09. Assam, Chhattisgarh, Manipur, Mizoram and Uttarakhand (details in Appendix-4) had a growth of more than 100 *per cent* as compared to that of the previous year. The reason(s) for growth of more than 100 *per cent* in respect of these five states needs to be examined. The issue is especially significant in view of the negative growth in Direct Tax collections in other 16 states during the same period.

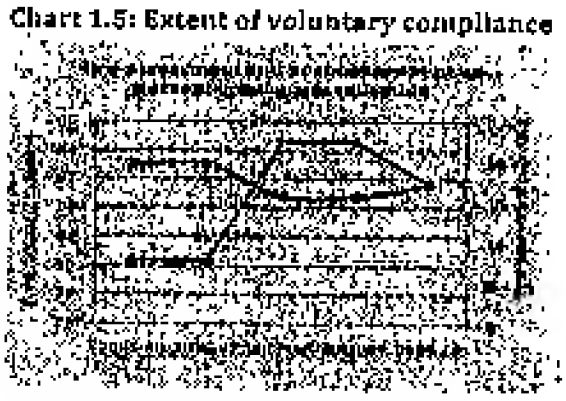
1.6 Effective rate of taxation

The effective tax rate for companies[13] was 22.8 *per cent* in 2008-09[14] which was substantially lower than the statutory tax rate of 33.9 *per cent*. We found that 179 companies with profits before taxes (PBT) of ₹ 500 crore and above accounted for 57.5 *per cent* of the total PBT and 55.7 *per cent* of the total corporate tax payable. However, their effective tax rate was only 22.1 *per cent* while the effective tax rate was 25.5 *per cent* for companies having PBT of upto ₹ one crore. This shows that tax concessions are being availed of mainly by large companies.

1.7 Extent of voluntary compliance

Voluntary compliance by assessees (pre-assessment stage) accounted for 82.8 *per cent* of the gross collections in 2009-10. The collection by way of voluntary compliance was higher than 2005-06 and 2006-07 but marginally lower than 2007-08 and 2008-09.

Chart 1.5: Extent of voluntary compliance



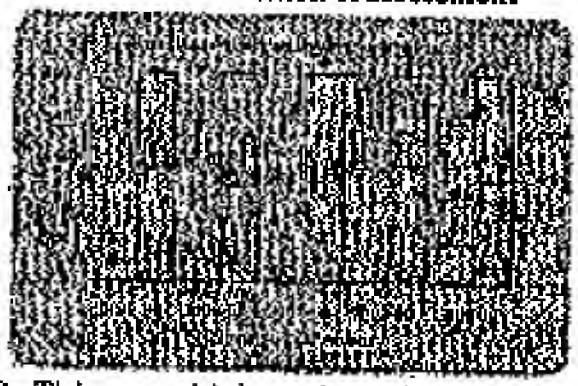
[12] Andhra Pradesh, Assam, Bihar, Chattisgarh, Gujarat, Jammu & Kashmir, Karnataka, Madhya Pradesh, Maharashtra, Manipur, Mizoram, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttaranchal and West Bengal

[13] Source: Receipts Budget 2010-11

[14] The effective tax rate was 22.24 per cent in 2007-08.

1.8 Position of assessment

Chart 1.6: Position of assessment



High-risk tax returns are selected and examined with reference to collateral data by the assessing officers (AOs) in scrutiny assessments. Out of the total 8.7 lakh scrutiny assessment cases for disposal (Chart 1.6), the Department had disposed off 4.3 lakh (49.3 *per cent*) cases in 2009-10. This was higher than the scrutiny assessments completed in 2006-07 and 2007-08. However, despite the increase in the number of officers involved in assessment duty, number of scrutiny assessments came down in 2009-10 as compared to 2008-09. This is to be seen in the perspective that the very base of scrutiny assessments due had been reduced from 9.5 lakh in 2008-09 to 8.7 lakh in 2009-10. The pendency of scrutiny assessments increased from 45.7 *per cent* in 2005-06 to 50.7 *per cent* in 2009-10.

Working norms of officers deployed for assessment and non-assessment functions need to be framed up so that qualitative content of the tax scrutiny can be improved alongwith improving the pendency status of cases.

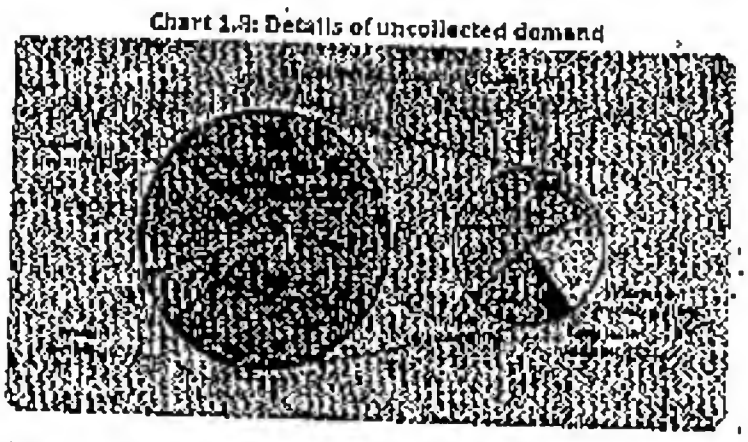
1.9 Efficiency of collection

Chart 1.7: Efficiency of collection

In 2009-10, only 65 *per cent* of the total demands cumulatively raised in assessments upto that year had been collected (Chart 1.7). The performance was identical as in 2005-06 and 2008-09. However, there was a decline as compared to collection of 74 *per cent* for 2007-08. At the end of 2009-10, as much as ₹ 2.3 lakh crore remained uncollected. This comprised demand of ₹ 1.8 lakh crore of earlier years and current demand (2009-10) of ₹ 0.5 lakh crore. However, in 2008-09, earlier years pending demand was ₹ 0.9 lakh crore and current demand was of ₹ 1.1 lakh crore. Out of which, one group namely Hassan Ali alone accounted for ₹ 71,784 crore of uncollected demand (refer paragraph 1.8 of Audit Report No. 4 of 2009-10). However, this matter is pending in appeal before ITAT.

The uncollected demand is rising despite clear provisions in the Act to enforce collection and recovery of outstanding demand viz. attachment and sale of assessee's movable and immovable property, appointment of a receiver for the management of assessee's properties and imprisonment.

Chart 1.8: Details of uncollected demand



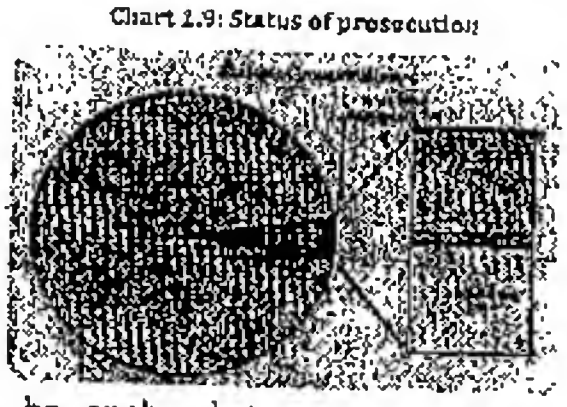
The Department intimated that various factors (Chart 1.8) contributed to the uncollected demand. ₹ One lakh crore (44.6 *per cent*) remained uncollected as there were no assets for recovery or the companies were under liquidation/BIFR.

Defaults in payment of tax are referred to the Tax Recovery Officers (TROs) who draw up a certificate specifying the amount of arrears due from the assessees and proceed to recover the amount. The recovery mechanism is inefficient as certified demand remaining uncollected increased to ₹ 95,122.4 crore (96.6 *per cent*) 2009-10 from ₹ 27,209 crore (86 *per cent*) in 2005-06. It registered a three fold growth in the last year itself as compared to ₹ 27,461 crore in 2008-09.

Board should frame up a time bound action plan for recovery of current and arrear demands by fixing targets for each assessing officer. Recovery proceedings can be made effective by increasing the accountability of the TROs and incentivizing achievements.

1.10 Status of prosecution

Chart 1.9: Status of prosecution

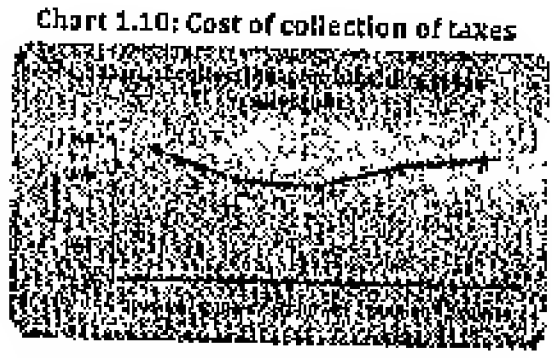


The Department had launched prosecution in 12,060 cases of tax evasion upto 2009-10. Only 599 cases (5 *per cent* of the total cases) were disposed off, of which 276 cases resulted in acquittal (Chart 1.9). The Board needs to analyse the reasons for slow pace of disposal. The high rate of acquittal also needs to be analysed to ensure greater effectiveness of prosecution as a deterrent.

1.11 Cost of collection of taxes

Total cost of direct tax collection (Chart 1.10) showed a decreasing trend from 0.75 *per cent* in 2005-06 to 0.55 *per cent* in 2007-08. In 2008-09 and 2009-10, there was rise in cost mainly due to increase in establishment cost.

Chart 1.10: Cost of collection of taxes



1.12 Refund cases and interest paid on refunds

Where the amount of tax paid exceeds the amount of tax payable, the assessees are entitled to a refund of the excess amount. Simple interest at the prescribed rate is payable on the amount of such refund. Refund is also admissible (alongwith interest) as a result of any order passed in appeal or other proceedings. Pendency of direct refund claims results in outflow of revenue from Government by way of interest.

Out of total 48 lakh direct refund claims, the Department had disposed off 28.6 lakh (59.6 *per cent*) claims in 2009-10. The pendency rate has increased to 40.4 *per cent* in 2009-10 from 22.5 *per cent* in 2005-06.

The Government has refunded ₹ 57,101 crore which includes interest of ₹ 12,951 crore (22.7 *per cent*) from gross collection of Corporation Tax and Income Tax of ₹ 4,24,713 crore in 2009-10. The interest paid on refunds in 2008-09 was ₹ 5,778 crore (14.8 *per cent* of ₹ 39,097 crore, the amount refunded) out of the gross collection of ₹ 3,58,529 crore. The interest on refunds also needs to be seen in the perspective of pendency of direct refund cases which increased from 5.7 lakh in 2005-06 to 19.4 lakh in 2009-10 registering an increase of 240 *per cent*.

1.12.1 Incorrect accounting of interest on refunds

We had earlier commented[15] that the Government was following an incorrect procedure of accounting for interest paid on refunds. Interest payment is a charge on the Consolidated Fund of India and is, therefore, payable through a proper budgetary mechanism. Accordingly, Minor Head "interest on refunds" is to be operated under the Major Head "2020-Collection of Taxes on Income and Expenditure". However, no budget provision for 'interest on refund' was made in the Budget Estimates for 2009-10 and the expenditure on interest on refunds amounting to ₹ 12,950.8 crore was treated as reduction in

[15] in Audit Reports of 2004, 2005, 2006, 2007, 2008, 2009 and 2009-10

revenue. Accounting of interest on refund as reduction in revenue is incorrect as this interest was never collected in the first instance. Interest on belated refunds of excess tax should be budgeted as an expenditure item which, in fact, was done in the Budget Estimates 2001-02 when ₹ 92 crore was provided in the demand of 'Direct Taxes' under the Major Head '2020 – Collection of taxes on Income & Expenditure' towards interest on belated refund of excess tax. However, subsequently at the Revised Estimates stage the earlier practice of showing the interest on excess refund as deduct receipt was reverted to. The incorrect practice is still being followed and needs to be rectified. In response the Department stated that this is a policy decision taken at the highest level.

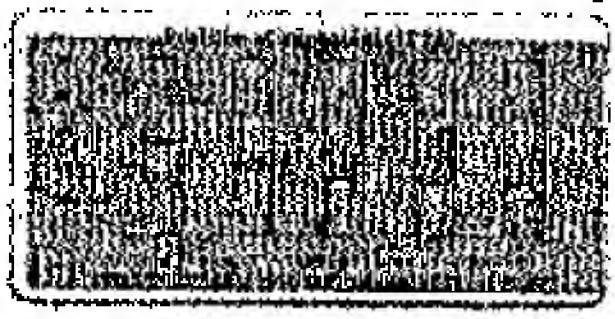
1.13 Appeal cases

An aggrieved tax payer has the right to dispute a tax demand with the Income Tax Department through the Commissioner of Income Tax (Appeals). Second appeal against the orders of CIT(A) lies in the Income Tax Appellate Tribunal (ITAT) which functions under the Ministry of Law. On any question of law arising out of an order of ITAT, a taxpayer may appeal progressively to the High Court and the Supreme Court. Analogous right to appeal is also available to the Department against the orders of CIT (A) and onwards.

1.13.1 Appeals pending before CIT(A)

As per the instructions of the Board, each CIT(Appeal) is required to dispose off a minimum of 60 appeals per month, and a total of 720 appeals annually. Thus, 1.1 lakh appeals could have been disposed off during the year on the basis of the working strength of 151 CIT (Appeals). CIT(A) were required to dispose off 2,60,700 cases during 2009-10. Out of this only 0.8 lakh appeals (30.6 *per cent*) were disposed off (Chart 1.11) and the average annual disposal per CIT(A) during 2009-10 was only 528 appeals. The amount locked up in appeal cases with CIT(A) was ₹ 2.2 lakh crore in 2009-10 which is equivalent to 66.9 *per cent* of the revised revenue deficit of Government of India.

Chart 1.11: Appeals disposed off and pending



1.13.2 Further, the amount locked up in appeals at higher levels (ITAT/High Court/Supreme Court) was ₹ 91,087 crore in 60,246 cases as on 31 March 2010.

1.14 Internal Audit

Internal audit is an important part of the Departmental control that provides the assurance that demands/refunds are processed accurately by correct application of the provisions of the Act.

The Department introduced a new Internal Audit System w.e.f. June 2007 to have an effective and objective set up of Internal Audit wherein the assessment functions and audit functions are assigned to separate specialized wings. Under each CIT(Audit) there shall be one Addl. CIT who would be responsible for internal audit of high value cases and supervision of the audit work of special audit party (SAP) headed by Dy./Asstt. CsIT and the internal audit party (IAP) headed by ITOs. The minimum number of cases to be audited by each Addl. CIT, SAP and IAP in a year shall be 50, 300 and 1,300 (600 corporate cases and 700 non-corporate cases) respectively.

Internal audit wing had planned 2,53,300 cases for audit during 2009-10 based on the working strength of wing. Out of which, 1,76,840 were completed thereby achieving 69.8 *per cent* of the target.

Internal audit had raised 14,577 observations in the audited assessments with money value of ₹ 1,224.8 crore during the year 2009-10. Based on the reply from assessment units, the internal audit had settled 6,434 cases with money value of ₹ 657.6 crore.

However, we detected numerous observations in the assessments previously audited by Internal Audit. We noticed that Internal audit had audited 2,142 assessments in 2009-10, where we pointed out the mistakes but the same were not detected by them.

Out of 453 draft paragraphs included in this report, only 52 cases (11.5 *per cent*) were seen by internal audit and no mistakes were detected by them, which indicates need for improvement in quality of internal audit.

Departmental response to internal audit also needs improvement. Only 12.6 *per cent* of the major findings raised by internal audit were acted upon by the assessing officers in 2009-10. The total pendency increased from 21,299 cases having tax effect of ₹ 3,404.2 crore in 2008-09 to 29,442 cases having tax effect of ₹ 3,971.4 crore in 2009-10.

ANNEXURE-R/37

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Budget 2017-2018

Speech of

Arun Jaitley

Minister of Finance

February 1, 2017

Madam Speaker,

On this auspicious day of *Vasant Panchami*, I rise to present the Budget for 2017-18. Spring is a season of optimism. I extend my warm greetings to everyone on this occasion.

2. **Madam Speaker,** our Government was elected amidst huge expectations of the people. The underlying theme of countless expectations was good governance. The expectations included burning issues like inflation and price rise, corruption in day to day transactions and crony capitalism. There was also expectation for a major change in the way the country's natural resources were allocated, processed and deployed.

3 In the last two and half years, it has been our mission to bring a Transformative Shift in the way our country is governed. We have moved

- from a discretionary administration to a policy and system based administration;
- from favouritism to transparency and objectivity in decision making;
- from blanket and loose entitlements to targeted delivery; and
- from informal economy to formal economy.

Inflation, which was in double digits, has been controlled; sluggish growth has been replaced by high growth; and a massive war against black money has been launched. We have worked tirelessly on all these fronts and feel encouraged by the unstinted support of the people to our initiatives. The Government is now seen as a trusted custodian of public money. I take this opportunity to express our gratitude to the people of India for their strong support.

4. We shall continue to undertake many more measures to ensure that the fruits of growth reach the farmers, the workers, the poor, the scheduled

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castes and scheduled tribes, women and other vulnerable sections of our society. Our focus will be on energising our youth to reap the benefits of growth and employment.

5. **Madam Speaker,** I am presenting this Budget when the world economy faces considerable uncertainty, in the aftermath of major economic and political developments during the last one year. Nevertheless, the International Monetary Fund (IMF) estimates that world GDP will grow by 3.1% in 2016 and 3.4% in 2017. The advanced economies are expected to increase their growth from 1.6% to 1.9% and the emerging economies from 4.1% to 4.5%. As per current indications, macro-economic policy is expected to be more expansionary in certain large economies. Growth in a number of emerging economies is expected to recover in 2017, after relatively poor performance in 2016. These are positive signs and point to an optimistic outlook for the next year.

6. There are, however, three major challenges for emerging economies. First, the current monetary policy stance of the US Federal Reserve, to increase the policy rates more than once in 2017, may lead to lower capital inflows and higher outflows from the emerging economies. Second, the uncertainty around commodity prices, especially that of crude oil, has implications for the fiscal situation of emerging economies. It is however expected that increase, if any, in oil prices would get tempered by quick response from producers of shale gas and oil. This would have a sobering impact on prices of crude and petroleum. Third, in several parts of the world, there are signs of increasing retreat from globalisation of goods, services and people, as pressures for protectionism are building up. These developments have the potential to affect exports from a number of emerging markets, including India.

7. Amidst all these developments, India stands out as a bright spot in the world economic landscape. India's macro-economic stability continues to be the foundation of economic success. CPI inflation declined from 6% in July 2016 to 3.4% in December, 2016 and is expected to remain within RBI's mandated range of 2% to 6%. Favourable price developments reflect prudent macro-economic management, resulting in higher agricultural production, especially in pulses. India's Current Account Deficit declined from about 1% of GDP last year to 0.3% of GDP in the first half of 2016-17. Foreign Direct Investment (FDI) increased from ₹ 1,07,000 crores in the first half of last year to ₹ 1,45,000 crores in the first half of 2016-17. This marks an increase by 36%, despite 5% reduction in global FDI inflows. Foreign exchange reserves have reached 361 billion US Dollars as on 20th January,

2017, which represents a comfortable cover for about 12 months of imports.

8. The Government has also continued on the steady path of fiscal consolidation, without compromising on the public investment requirements of the economy. Externally, the economy successfully weathered a number of shocks, the redemption of FCNR deposits, volatility from the US elections and the Fed rate hike. According to IMF forecast, India is expected to be one of the fastest growing major economies in 2017.

9. A number of global reports and assessments, over the last two years, have shown that India has considerably improved its policies, practices and economic profile. These are reflected in Doing Business Report of the World Bank; World Investment Report 2016 of UNCTAD; Global Competitiveness Report of 2015-16 and 2016-17 of the World Economic Forum; and several other Reports. India has become the sixth largest manufacturing country in the world, up from ninth previously. We are seen as an engine of global growth.

10. In the last one year, our country has witnessed historic and impactful economic reforms and policy making. In fact, India was one of the very few economies undertaking transformational reforms. There were two tectonic policy initiatives, namely, passage of the Constitution Amendment Bill for GST and the progress for its implementation ; and demonetisation of high denomination bank notes. The advantages of GST for our economy in terms of spurring growth, competitiveness, indirect tax simplification and greater transparency have already been extensively discussed in both Houses of Parliament. I thank all Members of both the Houses for having passed the Constitution Amendment unanimously. I also thank the State Governments for resolving all relevant issues in the GST Council.

11. Demonetisation of high denomination bank notes was in continuation of a series of measures taken by our Government during the last two years. It is a bold and decisive measure. For several decades, tax evasion for many has become a way of life. This compromises the larger public interest and creates unjust enrichment in favour of the tax evader, to the detriment of the poor and deprived. This has bred a parallel economy which is unacceptable for an inclusive society. Demonetisation seeks to create a new 'normal' wherein the GDP would be bigger, cleaner and real. This exercise is part of our Government's resolve to eliminate corruption, black money, counterfeit currency and terror funding. Like all reforms, this measure is obviously disruptive, as it seeks to change the retrograde status quo. Drop in economic activity, if any, on account of the currency squeeze during the remonetisation period is expected to have only a transient

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impact on the economy. I am reminded here of what the Father of the Nation, Mahatma Gandhi, had said: "A right cause never fails".

12. Demonetisation has strong potential to generate long-term benefits in terms of reduced corruption, greater digitisation of the economy, increased flow of financial savings and greater formalisation of the economy, all of which would eventually lead to higher GDP growth and tax revenues. Demonetisation helps to transfer resources from the tax evaders to the Government, which can use these resources for the welfare of the poor and the deprived. There is early evidence of an increased capacity of Banks to lend at reduced interest rates and a huge shift towards digitisation among all sections of society. We firmly believe that demonetisation and GST which were built on the third transformational achievement of our Government, namely, the JAM vision, will have an epoch making impact on our economy and the lives of our people.

13. **Madam Speaker**, we are at an important turning point in the path of our growth and development.

इस मोड़ पर घबरा के न थम जाइए आप
जो बात नयी है उसे अपनाइए आप
डरते हैं नयी राह पे क्यों चलने से
हम आगे-आगे चलते हैं आजाइए आप

14. The pace of remonetisation has picked up and will soon reach comfortable levels. The effects of demonetisation are not expected to spill over into the next year. Thus IMF, even while revising India's GDP forecast for 2016 downwards, has projected a GDP growth of 7.2% and 7.7% in 2017 and 2018 respectively. The World Bank, however, is more optimistic and has projected a GDP growth of 7% in 2016-17, 7.6% in 2017-18 and 7.8% in 2018-19. This pick up in our economy is premised upon our policy and determination to continue with economic reforms; increase in public investment in infrastructure and development projects; and export growth in the context of the expected rebound in world economy. The surplus liquidity in the banking system, created by demonetisation, will lower borrowing costs and increase the access to credit. This will boost economic activity, with multiplier effects.

15. The announcements made by Honourable Prime Minister on 31st December, 2016 address many of the key concerns of our economy at this juncture, such as, housing for the poor; relief to farmers; credit support to

MSMEs; encouragement to digital transactions; assistance to pregnant women and senior citizens; and priority to dalits, tribals, backward classes and women under the Mudra Yojana.

16. My overall approach, while preparing this Budget, has been to spend more in rural areas, infrastructure and poverty alleviation and yet maintain the best standards of fiscal prudence. I have also kept in mind the need to continue with economic reforms, promote higher investments and accelerate growth.

17. The last one year was a witness to other major reforms, namely, enactment of the Insolvency and Bankruptcy Code; amendment to the RBI Act for inflation targeting; enactment of the *Aadhar* bill for disbursement of financial subsidies and benefits; significant reforms in FDI policy; the job creating package for textile sector; and several other measures. We will continue the process of economic reforms for the benefit of the poor and the underprivileged.

18. **Madam Speaker**, the Budget for 2017-18 contains three major reforms. First, the presentation of the Budget has been advanced to 1st February to enable the Parliament to avoid a Vote on Account and pass a single Appropriation Bill for 2017-18, before the close of the current financial year. This would enable the Ministries and Departments to operationalise all schemes and projects, including the new schemes, right from the commencement of the next financial year. They would be able to fully utilise the available working season before the onset of the monsoon. Second, the merger of the Railways Budget with the General Budget is a historic step. We have discontinued the colonial practice prevalent since 1924. This decision brings the Railways to the centre stage of Government's fiscal policy and would facilitate multi modal transport planning between railways, highways and inland waterways The functional autonomy of Railways will, however, continue. Third, we have done away with the plan and non-plan classification of expenditure. This will give us a holistic view of allocations for sectors and ministries. This would facilitate optimal allocation of resources.

19. **Madam Speaker**, we are aware that we need to do more for our people. Continuing with the task of fulfilling the people's expectations, our agenda for the next year is : "Transform, Energise and Clean India", that is, TEC India. This agenda of TEC India seeks to

- Transform the quality of governance and quality of life of our people;

- Energise various sections of society, especially the youth and the vulnerable, and enable them to unleash their true potential; and
- Clean the country from the evils of corruption, black money and non-transparent political funding.

I propose to present my Budget proposals under ten distinct themes to foster this broad agenda. The themes are :

(i) **Farmers** : for whom we have committed to double the income in 5 years;

(ii) **Rural Population** : providing employment and basic infrastructure;

(iii) **Youth** : energising them through education, skills and jobs;

(iv) **Poor and the Underprivileged** : strengthening the systems of social security, health care and affordable housing;

(v) **Infrastructure**: for efficiency, productivity and quality of life;

(vi) **Financial Sector** : growth and stability through stronger institutions;

(vii) **Digital Economy** : for speed, accountability and transparency;

(viii) **Public Service** : effective governance and efficient service delivery through people's participation;

(ix) **Prudent Fiscal Management** : to ensure optimal deployment of resources and preserve fiscal stability; and

(x) **Tax Administration** : honouring the honest.

I. FARMERS

20. The Indian farmer has once again shown his commitment and resilience in the current year. The total area sown under kharif and rabi seasons are higher than the previous year. With a better monsoon, agriculture is expected to grow at 4.1% in the current year.

21. In last year's Budget speech, I focused on 'income security' of farmers to double their income in 5 years. I had also announced a number of measures. We have to take more steps and enable the farmers to increase their production and productivity; and to deal with post-harvest challenges.

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22. For a good crop, adequate credit should be available to farmers in time. The target for agricultural credit in 2017-18 has been fixed at a record level of ₹ 10 lakh crores. We will take special efforts to ensure adequate flow of credit to the under serviced areas, the Eastern States and Jammu & Kashmir. The farmers will also benefit from 60 days' interest waiver announced by Honourable Prime Minister in respect of their loans from the cooperative credit structure.

23. About 40% of the small and marginal farmers avail credit from the cooperative structure. The Primary Agriculture Credit Societies (PACS) act as the front end for loan disbursements. We will support NABARD for computerisation and integration of all 63,000 functional PACS with the Core Banking System of District Central Cooperative Banks. This will be done in 3 years at an estimated cost of ₹ 1,900 crores, with financial participation from State Governments. This will ensure seamless flow of credit to small and marginal farmers.

24. At the time of sowing, farmers should feel secure against natural calamities. The *Fasal Bima Yojana* launched by our Government is a major step in this direction. The coverage of this scheme will be increased from 30% of cropped area in 2016-17 to 40% in 2017-18 and 50% in 2018-19. The Budget provision of ₹ 5,500 crores for this Yojana in BE 2016-17 was increased to ₹ 13,240 crores in RE 2016-17 to settle the arrear claims. For 2017-18, I have provided a sum of ₹ 9,000 crores. The sum insured under this Yojana has more than doubled from ₹ 69,000 crores in Kharif 2015 to ₹ 1,41,625 crores in Kharif 2016.

25. Issuance of Soil Health Cards has gathered momentum. The real benefit to farmers would be available only when the soil samples are tested quickly and nutrient level of the soil is known. Government will therefore set up new mini labs in *Krishi Vigyan Kendras* (KVKs) and ensure 100% coverage of all 648 *KVKs* in the country. In addition, 1000 mini labs will be set up by qualified local entrepreneurs. Government will provide credit linked subsidy to these entrepreneurs.

26. A Long Term Irrigation Fund has already been set up in NABARD. Honourable Prime Minister has announced an addition of ₹ 20,000 crores to its corpus. This will take the total corpus of this Fund to ₹ 40,000 crores.

27. A dedicated Micro Irrigation Fund will be set up in NABARD to achieve the goal, 'per drop more crop'. The Fund will have an initial corpus of ₹5,000 crores.

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28. For the post-harvest phase, we will take steps to enable farmers to get better prices for their produce in the markets. The coverage of National Agricultural Market (e-NAM) will be expanded from the current 250 markets to 585 APMCs. Assistance up to a ceiling of ₹ 75 lakhs will be provided to every e-NAM market for establishment of cleaning, grading and packaging facilities. This will lead to value addition of farmers' produce.

29. Market reforms will be undertaken and the States would be urged to denotify perishables from APMC. This will give opportunity to farmers to sell their produce and get better prices.

30. We also propose to integrate farmers who grow fruits and vegetables with agro processing units for better price realisation and reduction of post-harvest losses. A model law on contract farming would therefore be prepared and circulated among the States for adoption.

31. Dairy is an important source of additional income for the farmers. Availability of milk processing facility and other infrastructure will benefit the farmers through value addition. A large number of milk processing units set up under the Operation Flood Programme has since become old and obsolete. A Dairy Processing and Infrastructure Development Fund would be set up in NABARD with a corpus of ₹ 8,000 crores over 3 years. Initially, the Fund will start with a corpus of ₹ 2,000 crores.

II. RURAL POPULATION

32. I now turn to the Rural Sector, which was so dear to the heart of Mahatma Gandhi.

33. Over ₹ 3 lakh crores are spent in rural areas every year, if we add up all the programmes meant for rural poor from the Central Budget, State Budgets, Bank linkage for self-help groups, etc. With a clear focus on improving accountability, outcomes and convergence, we will undertake a Mission Antyodaya to bring one crore households out of poverty and to make 50,000 gram panchayats poverty free by 2019, the 150th birth anniversary of Gandhiji. We will utilise the existing resources more effectively along with annual increases. This mission will work with a focused micro plan for sustainable livelihood for every deprived household. A composite index for poverty free gram panchayats would be developed to monitor the progress from the baseline.

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34. Our Government has made a conscious effort to reorient MGNREGA to support our resolve to double farmers' income. While providing at least 100 days employment to every rural household, MGNREGA should create productive assets to improve farm productivity and incomes. The target of 5 lakh farm ponds and 10 lakh compost pits announced in the last Budget from MGNREGA funds will be fully achieved. In fact, against 5 lakh farm ponds, it is expected that about 10 lakh farm ponds would be completed by March 2017. During 2017-18, another 5 lakh farm ponds will be taken up. This single measure will contribute greatly to drought proofing of gram panchayats.

35. Participation of women in MGNREGA has increased to 55% from less than 48% in the past.

36. Honourable Members would be happy to note that the budget provision of ₹38,500 crores under MGNREGA in 2016-17 has been increased to ₹48,000 crores in 2017-18. This is the highest ever allocation for MGNREGA. The initiative to geo-tag all MGNREGA assets and putting them in public domain has established greater transparency. We are also using space technology in a big way to plan MGNREGA works.

37. The *Pradhan Mantri Gram Sadak Yojana* (PMGSY) is now being implemented as never before. The pace of construction of PMGSY roads has accelerated to reach 133 km roads per day in 2016-17, as against an average of 73 km during the period 2011-2014. We have also taken up the task of connecting habitations with more than 100 persons in left wing extremism affected Blocks. We have committed to complete the current target under PMGSY by 2019. I have provided a sum of ₹ 19,000 crores in 2017-18 for this scheme. Together with the contribution of States, an amount of ₹ 27,000 crores will be spent on PMGSY in 2017-18.

38. We propose to complete 1 crore houses by 2019 for the houseless and those living in kutcha houses. I have stepped up the allocation for Pradhan Mantri Awaas Yojana – Gramin from ₹ 15,000 crores in BE 2016-17 to ₹ 23,000 crores in 2017-18.

39. We are well on our way to achieving 100% village electrification by 1st May 2018. An increased allocation of ₹ 4,814 crores has been proposed under the Deendayal Upadhyaya Gram Jyoti Yojana in 2017-18.

40. I have also proposed to increase the allocations for Deendayal Antyodaya Yojana- National Rural Livelihood Mission for promotion of skill development and livelihood opportunities for people in rural areas to

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₹4,500 in 2017-18. The allocation for Prime Minister's Employment Generation Programme (PMEGP) and credit support schemes has been increased more than 3 times.

41. Swachh Bharat Mission (Gramin) has made tremendous progress in promoting safe sanitation and ending open defecation. Sanitation coverage in rural India has gone up from 42% in October 2014 to about 60%. Open Defecation Free villages are now being given priority for piped water supply.

42. We propose to provide safe drinking water to over 28,000 arsenic and fluoride affected habitations in the next four years. This will be a sub mission of the National Rural Drinking Water Programme (NRDWP).

43. For imparting new skills to the people in the rural areas, mason training will be provided to 5 lakh persons by 2022, with an immediate target of training at least 20,000 persons by 2017-18.

44. Panchayati raj institutions still lack human resources for implementing development programmes. A programme of "human resource reforms for results" will be launched during 2017-18 for this purpose.

45. The Government will continue to work closely with the farmers and the people in the rural areas to improve their life and environment. This is a non-negotiable agenda for our Government. The total allocation for the rural, agriculture and allied sectors in 2017-18 is ₹ 1,87,223 crores, which is 24% higher than the previous year.

III. YOUTH

46. Let me now focus on my proposals for the youth.

47. Quality education will energise our youth. In the words of Swami Vivekananda, "The education which does not help the common mass of people to equip themselves for the struggle for life ..... is it worth the name?"

48. We have proposed to introduce a system of measuring annual learning outcomes in our schools. Emphasis will be given on science education and flexibility in curriculum to promote creativity through local innovative content.

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49. An Innovation Fund for Secondary Education will be created to encourage local innovation for ensuring universal access, gender parity and quality improvement. This will include ICT enabled learning transformation. The focus will be on 3479 educationally backward blocks.

50. In higher education, we will undertake reforms in the UGC. Good quality institutions would be enabled to have greater administrative and academic autonomy. Colleges will be identified based on accreditation and ranking, and given autonomous status. A revised framework will be put in place for outcome based accreditation and credit based programmes.

51. We propose to leverage information technology and launch SWAYAM platform with at least 350 online courses. This would enable students to virtually attend the courses taught by the best faculty; access high quality reading resources; participate in discussion forums; take tests and earn academic grades. Access to SWAYAM would be widened by linkage with DTH channels, dedicated to education.

52. We propose to establish a National Testing Agency as an autonomous and self-sustained premier testing organisation to conduct all entrance examinations for higher education institutions. This would free CBSE, AICTE and other premier institutions from these administrative responsibilities so that they can focus more on academics.

53. We have a huge demographic advantage. Skill India mission was launched in July 2015 to maximise the potential of our youth.

54. *Pradhan Mantri Kaushal Kendras* (PMKK) have already been promoted in more than 60 districts. We now propose to extend these *Kendras* to more than 600 districts across the country. 100 India International Skills Centres will be established across the country. These Centres would offer advanced training and also courses in foreign languages. This will help those of our youth who seek job opportunities outside the country.

55. In 2017-18, we also propose to launch the Skill Acquisition and Knowledge Awareness for Livelihood Promotion programme (SANKALP) at a cost of ₹ 4,000 crores. SANKALP will provide market relevant training to 3.5 crore youth.

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56. The next phase of Skill Strengthening for Industrial Value Enhancement (STRIVE) will also be launched in 2017-18 at a cost of ₹ 2,200 crores. STRIVE will focus on improving the quality and market relevance of vocational training provided in ITIs and strengthen the apprenticeship programmes through industry cluster approach.

57. A special scheme for creating employment in the textile sector has already been launched. A similar scheme will be implemented for the leather and footwear industries.

58. Tourism is a big employment generator and has a multiplier impact on the economy. Five Special Tourism Zones, anchored on SPVs, will be set up in partnership with the States. Incredible India 2.0 Campaign will be launched across the world.

IV. THE POOR AND THE UNDERPRIVILEGED

59. Madam Speaker, I now turn to my proposals for the poor and the underprivileged.

60. *Sabka Saath Sabka Vikas* begins with the girl child and women. *Mahila Shakti Kendra* will be set up at village level with an allocation of ₹ 500 crores in 14 lakh ICDS *Anganwadi* Centres. This will provide one stop convergent support services for empowering rural women with opportunities for skill development, employment, digital literacy, health and nutrition. A nationwide scheme for financial assistance to pregnant women has already been announced by Honourable Prime Minister on 31st December, 2016. Under this scheme, ₹ 6,000 each will be transferred directly to the bank accounts of pregnant women who undergo institutional delivery and vaccinate their children.

61. For the welfare of Women and Children under various schemes across all Ministries, I have stepped up the allocation from ₹ 1,56,528 crores in BE 2016-17 to ₹ 1,84,632 crores in 2017-18.

62. We propose to facilitate higher investment in affordable housing. Affordable housing will now be given infrastructure status, which will enable these projects to avail the associated benefits.

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63. The National Housing Bank will refinance individual housing loans of about ₹ 20,000 crore in 2017-18. Thanks to the surplus liquidity created by demonetisation, the Banks have already started reducing their lending rates, including those for housing. In addition, interest subvention for housing loans has also been announced by the Honourable Prime Minister.

64. Poverty is usually associated with poor health. It is the poor who suffer the maximum from various chronic diseases. Government has therefore prepared an action plan to eliminate Kala-Azar and Filariasis by 2017, Leprosy by 2018 and Measles by 2020. Elimination of tuberculosis by 2025 is also targeted. Similarly, action plan has been prepared to reduce IMR from 39 in 2014 to 28 by 2019 and MMR from 167 in 2011-13 to 100 by 2018-2020. 1.5 lakh Health Sub Centres will be transformed into Health and Wellness Centres.

65. We need to ensure adequate availability of specialist doctors to strengthen Secondary and Tertiary levels of health care. We have therefore decided to take steps to create additional 5,000 Post Graduate seats per annum. In addition, steps will be taken to roll out DNB courses in big District Hospitals; strengthen PG teaching in select ESI and Municipal Corporation Hospitals; and encourage reputed Private Hospitals to start DNB courses. We will work with the State Governments to take these tasks forward. The Government is committed to take necessary steps for structural transformation of the Regulatory framework of Medical Education and Practice in India.

66. Two new All India Institutes of Medical Sciences will be set up in the States of Jharkhand and Gujarat.

67. We propose to amend the Drugs and Cosmetics Rules to ensure availability of drugs at reasonable prices and promote use of generic medicines. New rules for regulating medical devices will also be formulated. These rules will be internationally harmonised and attract investment into this sector. This will reduce the cost of such devices.

68. We are keen on fostering a conducive labour environment wherein labour rights are protected and harmonious labour relations lead to higher productivity. Legislative reforms will be undertaken to simplify, rationalise and amalgamate the existing labour laws into 4 Codes on (i) wages; (ii) industrial relations; (iii) social security and welfare; and (iv) safety and working conditions. The Model Shops and Establishment Bill 2016 has been circulated to all States for consideration and adoption. This would open up additional avenues for employment of women. The amendment made to

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the Payment of Wages Act, is another initiative of our Government for the benefit of the labour and ease of doing business.

69. Our Government is giving special importance to implementation of the schemes for welfare of Scheduled Castes, Scheduled Tribes and Minorities. The allocation for the welfare of Scheduled Castes has been stepped up from ₹38,833 crores in BE 2016-17 to ₹ 52,393 crores in 2017-18, representing an increase of about 35%. The allocation for Scheduled Tribes has been increased to ₹31,920 crores and for Minority Affairs to ₹4,195 crores. The Government will introduce outcome based monitoring of expenditure in these sectors by the NITI Aayog.

70. For senior citizens, *Aadhar* based Smart Cards containing their health details will be introduced. A beginning will be made through a pilot in 15 districts during 2017-18. The LIC will implement a scheme for senior citizens to provide assured pension, with a guaranteed return of 8% per annum for 10 years.

V. INFRASTRUCTURE

71. The fifth component of TEC India agenda is Infrastructure.

72. Railways, roads and rivers are the lifeline of our country. I feel privileged to present the first combined Budget of independent India that includes the Railways also. We are now in a position to synergise the investments in railways, roads, waterways and civil aviation. For 2017-18, the total capital and development expenditure of Railways has been pegged at ₹ 1,31,000 crores. This includes ₹ 55,000 crores provided by the Government.

73. Among other things, the Railways will focus on four major areas, namely :

(i) Passenger safety;

(ii) Capital and development works;

(iii) Cleanliness; and

(iv) Finance and accounting reforms.

74. For passenger safety, a *Rashtriya Rail Sanraksha Kosh* will be created with a corpus of ₹ 1 lakh crores over a period of 5 years. Besides seed

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capital from the Government, the Railways will arrange the balance resources from their own revenues and other sources. Government will lay down clear cut guidelines and timeline for implementing various safety works to be funded from this *Kosh*. Unmanned level crossings on Broad Gauge lines will be eliminated by 2020. Expert international assistance will be harnessed to improve safety preparedness and maintenance practices.

75. In the next 3 years, the throughput is proposed to be enhanced by 10%. This will be done through modernisation and upgradation of identified corridors. Railway lines of 3,500 kms will be commissioned in 2017-18, as against 2,800 kms in 2016-17. Steps will be taken to launch dedicated trains for tourism and pilgrimage.

76. Railways have set up joint ventures with 9 State Governments. 70 projects have been identified for construction and development.

77. A beginning has been made with regard to station redevelopment. At least 25 stations are expected to be awarded during 2017-18 for station redevelopment. 500 stations will be made differently abled friendly by providing lifts and escalators.

78. It is proposed to feed about 7,000 stations with solar power in the medium term. A beginning has already been made in 300 stations. Works will be taken up for 2,000 railway stations as part of 1000 MW solar mission.

79. Our focus is on swachh rail. SMS based *Clean My Coach Service* has been started. It is now proposed to introduce 'Coach Mitra' facility, a single window interface, to register all coach related complaints and requirements. By 2019, all coaches of Indian Railways will be fitted with bio toilets. Pilot plants for environment friendly disposal of solid waste and conversion of biodegradable waste to energy are being set up at New Delhi and Jaipur railway stations. Five more such solid waste management plants are now being taken up.

80. Today Indian Railways face stiff competition from other modes of transportation which are dominated by the private sector. Transformative measures have to be undertaken to make Indian Railways competitive to retain their position of pre-eminence. The following steps will therefore be taken :

(i) Railways will implement end to end integrated transport solutions for select commodities through partnership with

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logistics players, who would provide both front and back end connectivity. Rolling stocks and practices will be customised to transport perishable goods, especially agricultural products.

(ii) Railways will offer competitive ticket booking facility to the public at large. Service charge on e-tickets booked through IRCTC has been withdrawn. Cashless reservations have gone up from 58% to 68%.

(iii) As part of accounting reforms, accrual based financial statements will be rolled out by March 2019.

81. It will be our continuous endeavour to improve the Operating Ratio of the Railways. The tariffs of Railways would be fixed, taking into consideration costs, quality of service, social obligations and competition from other forms of transport.

82. Metro rail is emerging as an important mode of urban transportation. A new Metro Rail Policy will be announced with focus on innovative models of implementation and financing, as well as standardisation and indigenisation of hardware and software. This will open up new job opportunities for our youth.

83. A new Metro Rail Act will be enacted by rationalising the existing laws. This will facilitate greater private participation and investment in construction and operation.

84. In the road sector, I have stepped up the Budget allocation for highways from ₹ 57,976 crores in BE 2016-17 to ₹ 64,900 crores in 2017-18. 2,000 kms of coastal connectivity roads have been identified for construction and development. This will facilitate better connectivity with ports and remote villages. The total length of roads, including those under PMGSY, built from 2014-15 till the current year is about 1,40,000 kms which is significantly higher than previous three years.

85. An effective multi modal logistics and transport sector will make our economy more competitive. A specific programme for development of multi-modal logistics parks, together with multi modal transport facilities, will be drawn up and implemented.

86. Select airports in Tier 2 cities will be taken up for operation and maintenance in the PPP mode. Airport Authority of India Act will be

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amended to enable effective monetisation of land assets. The resources, so raised, will be utilised for airport upgradation.

87. For transportation sector as a whole, including rail, roads, shipping, I have provided ₹ 2,41,387 crores in 2017-18. This magnitude of investment will spur a huge amount of economic activity across the country and create more job opportunities.

88. Telecom sector is an important component of our infrastructure eco system. The recent spectrum auctions have removed spectrum scarcity in the country. This will give a major fillip to mobile broadband and Digital India for the benefit of people living in rural and remote areas.

89. Under the BharatNet Project, OFC has been laid in 1,55,000 kms. I have stepped up the allocation for BharatNet Project to ₹ 10,000 crores in 2017-18. By the end of 2017-18, high speed broadband connectivity on optical fibre will be available in more than 1,50,000 *gram panchayats*, with wifi hot spots and access to digital services at low tariffs. A DigiGaon initiative will be launched to provide tele-medicine, education and skills through digital technology.

90. For strengthening our Energy sector, Government has decided to set up Strategic Crude Oil Reserves. In the first phase, 3 such Reserves facilities have been set up. Now in the second phase, it is proposed to set up caverns at 2 more locations, namely, Chandikhole in Odisha and Bikaner in Rajasthan. This will take our strategic reserve capacity to 15.33 MMT.

91. In solar energy, we now propose to take up the second phase of Solar Park development for additional 20,000 MW capacity.

92. We are also creating an eco-system to make India a global hub for electronics manufacturing. Over 250 investment proposals for electronics manufacturing have been received in the last 2 years, totalling an investment of ₹ 1.26 lakh crores. A number of global leaders and mobile manufacturers have set up production facilities in India. I have therefore exponentially increased the allocation for incentive schemes like M-SIPS and EDF to ₹ 745 crores in 2017-18. This is an all-time high.

93. We have to focus on our export infrastructure in a competitive world. A new and restructured Central scheme, namely, Trade Infrastructure for Export Scheme (TIES) will be launched in 2017-18.

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94. The total allocation for infrastructure development in 2017-18 stands at ₹3,96,135 crores.

VI. FINANCIAL SECTOR

95. I now turn to the Financial Sector. The focus of TEC India agenda in this sector is on building stable and stronger institutions. We will continue with our reform agenda with several new measures.

96. Our Government has already undertaken substantive reforms in FDI policy in the last two years. More than 90% of the total FDI inflows are now through the automatic route. The Foreign Investment Promotion Board (FIPB) has successfully implemented e-filing and online processing of FDI applications. We have now reached a stage where FIPB can be phased out. We have therefore decided to abolish the FIPB in 2017-18. A roadmap for the same will be announced in the next few months. In the meantime, further liberalisation of FDI policy is under consideration and necessary announcements will be made in due course.

97. The Commodities markets require further reforms for the benefits of farmers. An expert committee will be constituted to study and promote creation of an operational and legal framework to integrate spot market and derivatives market for commodities trading. e-NAM would be an integral part of such framework.

98. The draft bill to curtail the menace of illicit deposit schemes has been placed in the public domain and will be introduced shortly after its finalisation. There is an urgent need to protect the poor and gullible investors from another set of dubious schemes, operated by unscrupulous entities who exploit the regulatory gaps in the Multi State Cooperative Societies Act, 2002. We will amend this Act in consultation with various stakeholders, as part of our 'Clean India' agenda.

99. The bill relating to resolution of financial firms will be introduced in the current Budget Session of Parliament. This will contribute to stability and resilience of our financial system. It will also protect the consumers of various financial institutions. Together with the Insolvency and Bankruptcy Code, a resolution mechanism for financial firms will ensure comprehensiveness of the resolution system in our country.

100. I had stated in my last Budget speech that a Bill will be introduced to streamline institutional arrangements for resolution of disputes in infrastructure related construction contracts, PPP and public utility

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contracts. After extensive stakeholders' consultations, we have decided that the required mechanism would be instituted as part of the Arbitration and Conciliation Act 1996. An amendment Bill will be introduced in this regard.

101. Cyber security is critical for safeguarding the integrity and stability of our financial sector. A Computer Emergency Response Team for our Financial Sector (CERT-Fin) will be established. This entity will work in close coordination with all financial sector regulators and other stakeholders.

102. I have also proposed several other measures in the financial sector which are listed in **Annex I.**

103. Listing of Public Sector enterprises will foster greater public accountability and unlock the true value of these companies. The Government will put in place a revised mechanism and procedure to ensure time bound listing of identified CPSEs on stock exchanges. The disinvestment policy announced by me in the last budget will continue.

104. The shares of Railway PSEs like IRCTC, IRFC and IRCON will be listed in stock exchanges.

105. We see opportunities to strengthen our CPSEs through consolidation, mergers and acquisitions. By these methods, the CPSEs can be integrated across the value chain of an industry. It will give them capacity to bear higher risks, avail economies of scale, take higher investment decisions and create more value for the stakeholders. Possibilities of such restructuring are visible in the oil and gas sector. We propose to create an integrated public sector 'oil major' which will be able to match the performance of international and domestic private sector oil and gas companies.

106. Our ETF, comprising shares of ten CPSEs, has received overwhelming response in the recent Further Fund Offering (FFO). We will continue to use ETF as a vehicle for further disinvestment of shares. Accordingly, a new ETF with diversified CPSE stocks and other Government holdings will be launched in 2017-18.

107. The focus on resolution of stressed legacy accounts of Banks continues. The legal framework has been strengthened to facilitate resolution, through the enactment of the Insolvency and Bankruptcy Code and the amendments to the SARFAESI and Debt Recovery Tribunal Acts. In line with the *'Indradhanush'* roadmap, I have provided ₹ 10,000 crores for

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recapitalisation of Banks in 2017-18. Additional allocation will be provided, as may be required.

108. Listing and trading of Security Receipts issued by a securitization company or a reconstruction company under the SARFAESI Act will be permitted in SEBI registered stock exchanges. This will enhance capital flows into the securitization industry and will particularly be helpful to deal with bank NPAs.

109. The *Pradhan Mantri Mudra Yojana* has contributed significantly to funding the unfunded and the underfunded. Last year, the target of ₹ 1.22 lakh crores was exceeded. For 2017-18, I propose to double the lending target of 2015-16 and set it at ₹ 2.44 lakh crores. Priority will be given to Dalits, Tribals, Backward Classes, Minorities and Women.

110. The Stand Up India scheme was launched by our Government in April 2016 to support Dalit, Tribal and Women entrepreneurs to set up greenfield enterprises and become job creators. Over 16,000 new enterprises have come up through this scheme in activities. as diverse as food processing, garments, diagnostic centres, etc.

VII. DIGITAL ECONOMY

111. Promotion of a digital economy is an integral part of Government's strategy to clean the system and weed out corruption and black money. It has a transformative impact in terms of greater formalisation of the economy and mainstreaming of financial savings into the banking system. This, in turn, is expected to energise private investment in the country through lower cost of credit. India is now on the cusp of a massive digital revolution.

112. A shift to digital payments has huge benefits for the common man. The earlier initiative of our Government to promote financial inclusion and the JAM trinity were important precursors to our current push for digital transactions.

113. Already there is evidence of increased digital transactions. The BHIM app has been launched. It will unleash the power of mobile phones for digital payments and financial inclusion. 125 lakh people have adopted the BHIM app so far. The Government will launch two new schemes to promote the usage of BHIM; these are, Referral Bonus Scheme for individuals and a Cashback Scheme for merchants.

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114. Aadhar Pay, a merchant version of Aadhar Enabled Payment System, will be launched shortly. This will be specifically beneficial for those who do not have debit cards, mobile wallets and mobile phones. A Mission will be set up with a target of 2,500 crore digital transactions for 2017-18 through UPI, USSD, Aadhar Pay, IMPS and debit cards. Banks have targeted to introduce additional 10 lakh new PoS terminals by March 2017. They will be encouraged to introduce 20 lakh Aadhar based PoS by September 2017.

115. Increased digital transactions will enable small and micro enterprises to access formal credit. Government will encourage SIDBI to refinance credit institutions which provide unsecured loans, at reasonable interest rates, to borrowers based on their transaction history.

116. The digital payment infrastructure and grievance handling mechanisms shall be strengthened. The focus would be on rural and semi urban areas through Post Offices, Fair Price Shops and Banking Correspondents. Steps would be taken to promote and possibly mandate petrol pumps, fertilizer depots, municipalities, Block offices, road transport offices, universities, colleges, hospitals and other institutions to have facilities for digital payments, including BHIM App. A proposal to mandate all Government receipts through digital means, beyond a prescribed limit, is under consideration.

117. Government will strengthen the Financial Inclusion Fund to augment resources for taking up these initiatives.

118. Government will consider and work with various stakeholders for early implementation of the interim recommendations of the Committee of Chief Ministers on digital transactions.

119. The Committee on Digital Payments constituted by Department of Economic Affairs has recommended structural reforms in the payment eco system, including amendments to the Payment and Settlement Systems Act, 2007. Government will undertake a comprehensive review of this Act and bring about appropriate amendments. To begin with, it is proposed to create a Payments Regulatory Board in the Reserve Bank of India by replacing the existing Board for Regulation and Supervision of Payment and Settlement Systems. Necessary amendments are proposed to this effect in the Finance Bill 2017.

120. As we move faster on the path of digital transactions and cheque payments, we need to ensure that the payees of dishonoured cheques are

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able to realise the payments. Government is therefore considering the option of amending the Negotiable Instruments Act suitably.

VIII. PUBLIC SERVICE

121. I now turn to Public Service. Our focus here is on effective government and efficient service delivery.

122. We have made a strong beginning with regard to Direct Benefit Transfer (DBT) to LPG and kerosene consumers. Chandigarh and eight districts of Haryana have become kerosene free. 84 Government schemes have also boarded on the DBT platform.

123. The Government e-market place which is now functional for procurement of goods and services, has been selected as one of the winners of the South Asia Procurement Innovation Awards of the World Bank.

124. Our citizens in far flung regions of the country find it difficult to obtain passports and redress passport related grievances. We have decided to utilise the Head Post Offices as front offices for rendering passport services.

125. Our defence forces keep the country safe from both external and internal threats. A Centralised Defence Travel System has now been developed through which travel tickets can be booked online by our soldiers and officers. They do not have to face the hassle of standing in queues with railway warrants.

126. A comprehensive web based interactive Pension Disbursement System for Defence Pensioners will be established. This system will receive pension proposals and make payments centrally. This will reduce the grievances of defence pensioners.

127. At present our citizens, especially those belonging to the poor and unprivileged sections, go through cumbersome procedures of Government recruitment. There are multiplicity of agencies and examinations. We propose to introduce a system of single registration and two tier system of examination.

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128. Over the years, the number of tribunals have multiplied with overlapping functions. We propose to rationalise the number of tribunals and merge tribunals wherever appropriate.

129. In the recent past, there have been instances of big time offenders, including economic offenders, fleeing the country to escape the reach of law. We have to ensure that the law is allowed to take its own course. Government is therefore considering introduction of legislative changes, or even a new law, to confiscate the assets of such persons located within the country, till they submit to the jurisdiction of the appropriate legal forum. Needless to say that all necessary constitutional safeguards will be followed in such cases.

130. Our Government will continue to remain committed to improve the standards of public service and transparent governance. Service to the people was the life-long commitment of the Father of the Nation, Mahatma Gandhi. As we approach, the 150th Birth Anniversary of the Mahatma, we will take all steps to celebrate it in a befitting manner. A High Level Committee under the Chairmanship of Honourable Prime Minister is proposed to be set up for the same. We will also commemorate the centenary year of *Champaran Satyagrah* this year. Government of India will support Government of Gujarat to commemorate 100 years of Sabarmati Ashram in 2017, in a befitting manner. 200 years ago in 1817, a valiant uprising of soldiers led by Buxi Jagabandhu took place in Khordha of Odisha. We will commemorate the same appropriately.

IX. PRUDENT FISCAL MANAGEMENT

131. I now turn to the fiscal situation in the context of the Budget for 2017-18.

132. The total expenditure in Budget for 2017-18 has been placed at ₹21.47 lakh crores. With the abolition of Plan-Non Plan classification of expenditure, the focus is now on Revenue and Capital expenditure. I have stepped up the allocation for Capital expenditure by 25.4% over the previous year. This will have multiplier effects and lead to higher growth. The total resources being transferred to the States and the Union Territories with Legislatures is ₹ 4.11 lakh crores, against ₹ 3.60 lakh crores in BE 2016-17. Details of allocations for important sectors and schemes and transfer of resources to States are given in **Annex II** of my Speech.

133. I have made a provision of ₹ 3,000 crores under the Department of Economic Affairs to implement various Budget announcements and other

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new schemes in 2017-18. For Defence expenditure excluding pensions, I have provided a sum of ₹ 2,74,114 crores including ₹ 86,488 crores for Defence capital. I have increased the allocation for Scientific Ministries to ₹ 37,435 crore in 2017-18.

134. For the first time, a consolidated Outcome Budget, covering all Ministries and Departments, is being laid along with the other Budget documents. This will improve accountability of Government expenditure.

135. The FRBM Review Committee has given its report recently. The Committee has done an elaborate exercise and has recommended that a sustainable debt path must be the principal macro-economic anchor of our fiscal policy. The Committee has favoured Debt to GDP of 60% for the General Government by 2023, consisting of 40% for Central Government and 20% for State Governments. Within this framework, the Committee has derived and recommended 3% fiscal deficit for the next three years. The Committee has also provided for 'Escape Clauses', for deviations upto 0.5% of GDP, from the stipulated fiscal deficit target. Among the triggers for taking recourse to these Escape Clauses, the Committee has included "far-reaching structural reforms in the economy with unanticipated fiscal implications" as one of the factors. Although there is a strong case now to invoke this Escape Clause, I am refraining from doing so. The Report of the Committee will be carefully examined and appropriate decisions taken in due course.

136. Nevertheless, I take note of the fiscal deficit roadmap of 3% recommended by the Committee for the next three years. I have taken into consideration the need for higher public expenditure in the context of sluggish private sector investment and slow global growth. I have kept in mind the recommendation of the Committee that a sustainable debt should be the underlying basis of prudent fiscal management. Considering all these aspects, I have pegged the fiscal deficit for 2017-18 at 3.2% of GDP and remain committed to achieve 3% in the following year. With this gradual approach, I have ensured adherence to fiscal consolidation, without compromising the requirements of public investment.

137. I have taken due care to limit the net market borrowing of Government to ₹ 3.48 lakh crores after buyback, much lower than ₹ 4.25 lakh crores of the previous year. More importantly, the Revenue Deficit of 2.3% in BE 2016-17 stands reduced to 2.1% in the Revised Estimates. The Revenue Deficit for next year is pegged at 1.9% , against 2% mandated by the FRBM Act.

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138. It will be our endeavour to improve upon these fiscal numbers, especially the fiscal deficit, in the next year, through greater focus on quality of expenditure and higher tax realisation from the huge cash deposits in Banks, triggered by demonetisation.

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PART B

Madam Speaker,

139. I shall now present my tax proposals:

140. India's tax to GDP ratio is very low, and the proportion of direct tax to indirect tax is not optimal from the view point of social justice. I place before you certain data to indicate that our direct tax collection is not commensurate with the income and consumption pattern of Indian economy. As against estimated 4.2 crore persons engaged in organised sector employment, the number of individuals filing return for salary income are only 1.74 crore. As against 5.6 crore informal sector individual enterprises and firms doing small business in India, the number of returns filed by this category are only 1.81 crore. Out of the 13.94 lakh companies registered in India upto 31st March, 2014, 5.97 lakh companies have filed their returns for Assessment Year 2016-17. Of the 5.97 lakh companies which have filed their returns for Assessment Year 2016-17 so far, as many as 2.76 lakh companies have shown losses or zero income. 2.85 lakh companies have shown profit before tax of less than ₹ 1 crore. 28,667 companies have shown profit between ₹ 1 crore to ₹ 10 crore, and only 7781 companies have profit before tax of more than ₹ 10 crores.

141. Among the 3.7 crore individuals who filed the tax returns in 2015-16, 99 lakh show income below the exemption limit of ₹ 2.5 lakh p.a., 1.95 crore show income between ₹ 2.5 to ₹ 5 lakh, 52 lakh show income between ₹ 5 to ₹ 10 lakhs and only 24 lakh people show income above ₹ 10 lakhs. Of the 76 lakh individual assesses who declare income above ₹ 5 lakh, 56 lakh are in the salaried class. The number of people showing income more than ₹ 50 lakh in the entire country is only 1.72 lakh. We can contrast this with the fact that in the last five years, more than 1.25 crore cars have been sold, and number of Indian citizens who flew abroad, either for business or tourism, is 2 crore in the year 2015. From all these figures we can conclude that we are largely a tax non-compliant society. The predominance of cash in the economy makes it possible for the people to evade their taxes. When too many people evade taxes, the burden of their share falls on those who are honest and compliant.

142. After the demonetisation, the preliminary analysis of data received in respect of deposits made by people in old currency presents a revealing picture. During the period 8th November to 30th December 2016, deposits between ₹ 2 lakh and ₹ 80 lakh were made in about 1.09 crore accounts with an average deposit size of ₹ 5.03 lakh. Deposits of more than 80 lakh were made in 1.48 lakh accounts with average deposit size of ₹ 3.31 crores.

This data mining will help us immensely in expanding the tax net as well as increasing the revenues, which was one of the objectives of demonetisation.

143. Madam Speaker, one of the main priorities of our Government is to eliminate the black money component from the economy. We are committed to make our taxation rates more reasonable, our tax administration more fair and expand the tax base in the country. This approach will change the colour of money.

नई दुनिया है, नया दौर है, नयी है उमंग

कुछ थे पहले के तरीके, तो हैं कुछ आज के ढंग

रोशनी आके अंधेरों से जो टकरायी है

काले धन को भी बदलना पड़ा, आज अपना रंग

144. The net tax revenue of 2013-14 was ₹ 11.38 lakh crores. This grew by 9.4% in 2014-15 and 17% in 2015-16. As per the RE of 2016-17, we will end the year with a high growth rate of 17% for the second year in a row. Because of the serious efforts made by the Government, the rate of growth of advance tax in personal income tax in the first three quarters of the current financial is 34.8%.

145. Madam Speaker, the thrust of my tax proposals in this Budget is stimulating growth, relief to middle class, affordable housing, curbing black money, promoting digital economy, transparency of political funding and simplification of tax administration.

Measures for Promoting Affordable Housing and Real Estate Sector

146. In my budget proposals last year, I had announced a scheme for profit-linked income tax exemption for promoters of affordable housing scheme which has received a very good response. However, in order to make this scheme more attractive, I propose certain changes in the scheme. First of all, instead of built up area of 30 and 60 sq.mtr., the carpet area of 30 and 60 sq.mtr. will be counted. Also the 30 sq.mtr. limit will apply only in case of municipal limits of 4 metropolitan cities while for the rest of the country including in the peripheral areas of metros, limit of 60 sq.mtr. will apply. In order to be eligible, the scheme was to be completed in 3 years after commencement. I propose to extend this period to 5 years.

147. At present, the houses which are unoccupied after getting completion certificates are subjected to tax on notional rental income. For builders for whom constructed buildings are stock-in-trade, I propose to

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apply this rule only after one year of the end of the year in which completion certificate is received so that they get some breathing time for liquidating their inventory.

148. We also propose to make a number of changes in the capital gain taxation provisions in respect of land and building. The holding period for considering gain from immovable property to be long term is 3 years now. This is proposed to be reduced to 2 years. Also, the base year for indexation is proposed to be shifted from 1.4.1981 to 1.4.2001 for all classes of assets including immovable property. This move will significantly reduce the capital gain tax liability while encouraging the mobility of assets. We also plan to extend the basket of financial instruments in which the capital gains can be invested without payment of tax.

149. For Joint Development Agreement signed for development of property, the liability to pay capital gain tax will arise in the year the project is completed.

150. The new capital for State of Andhra Pradesh is being constructed by innovative land-pooling mechanism without use of the Land Acquisition Act. I propose to exempt from capital gain tax, persons holding land on 2.6.2014, the date on which the State of Andhra Pradesh was reorganised, and whose land is being pooled for creation of capital city under the Government scheme.

Measures for Stimulating Growth

151. A concessional with-holding rate of 5% is being charged on interest earned by foreign entities in external commercial borrowings or in bonds and Government securities. This concession is available till 30.6.2017. I propose to extend it to 30.6.2020. This benefit is also extended to Rupee Denominated (Masala) Bonds.

152. The Government gave income tax exemptions to start-ups with certain conditions last year. For the purpose of carry forward of losses in respect of such start-ups, the condition of continuous holding of 51% of voting rights has been relaxed subject to the condition that the holding of the original promoter/promoters continues. Also the profit linked deduction available to the start-ups for 3 years out of 5 years is being changed to 3 years out of 7 years.

153. Minimum Alternate Tax is at present levied as an advance tax. There is a strong demand for abolition of MAT. Although the plan for phasing out of exemptions will kick in from 1.4.2017, the full benefit of revenue out of phase-out will be available to Government only after 7 to 10 years when all

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those who are already availing exemptions at present complete their period of availment. Therefore, it is not practical to remove or reduce MAT at present. However, in order to allow companies to use MAT credit in future years, I propose to allow carry forward of MAT upto a period of 15 years instead of 10 years at present.

154. In my Budget proposals in 2015, I had announced that I would be bringing the corporate income tax rate down to 25% gradually. In 2016 Budget, I had announced a reduction by 1% in case of those companies whose turnover is less than ₹ 5 crore. In the same Budget, I had also announced that new manufacturing companies who do not avail of any exemption would be charged only 25% income tax.

155. Medium and Small Enterprises occupy bulk of economic activities and are also instrumental in providing maximum employment to people. However, since they do not get many exemptions, they end up paying more taxes as compared to large companies. As per data of financial year 2015-16, 2.85 lakh companies making profit of less than ₹ 1 crore pay effective tax rate of 30.26% while 298 companies making profit above ₹ 500 crores pay effective tax rate of 25.90%.

156. In order to make MSME companies more viable and also to encourage firms to migrate to company format, I propose to reduce the income tax for smaller companies with annual turnover upto ₹ 50 crore to 25%. As per data of Assessment Year 2015-16, there are 6.94 lakh companies filing returns of which 6.67 lakh companies fall in this category and, therefore, percentage-wise 96% of companies will get this benefit of lower taxation. This will make our MSME sector more competitive as compared to large companies. The revenue forgone estimate for this measure is expected to be ₹ 7,200 crore per annum.

157. In order to give a boost to banking sector, I propose to increase allowable provision for Non-Performing Asset from 7.5% to 8.5%. This will reduce the tax liability of banks. I also propose to tax interest receivable on actual receipt instead of accrual basis in respect of NPA accounts of all non-scheduled cooperative banks also at par with scheduled banks. This will remove hardship of having to pay tax even when interest income is not realised.

158. Considering the wide range of use of LNG as fuel as well as feed stock for petro-chemicals sector, I propose to reduce the basic customs duty on LNG from 5% to 2.5%.

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159. In order to incentivise domestic value addition and to promote Make in India, I propose to make changes in Customs & Central Excise duties in respect of certain items which are given in the **Annex III** of this speech. Some of these proposals are also for addressing duty inversion.

Promoting Digital Economy

160. There is a scheme of presumptive income tax for small and medium tax payers whose turnover is upto ₹ 2 crores. At present, 8% of their turnover is counted as presumptive income. I propose to make this 6% in respect of turnover which is received by non-cash means. This benefit will be applicable for transactions undertaken in the current year also.

161. I propose to limit the cash expenditure allowable as deduction, both for revenue as well as capital expenditure, to ₹ 10,000. Similarly, the limit of cash donation which can be received by a charitable trust is being reduced from ₹ 10,000/- to ₹ 2000/-.

162. The Special Investigation Team (SIT) set up by the Government for black money has suggested that no transaction above ₹ 3 lakh should be permitted in cash. The Government has decided to accept this proposal. Suitable amendment to the Income-tax Act is proposed in the Finance Bill for enforcing this decision.

163. To promote cashless transactions, I propose to exempt BCD, Excise/CV duty and SAD on miniaturised POS card reader for m-POS, micro ATM standards version 1.5.1, Finger Print Readers/Scanners and Iris Scanners. Simultaneously, I also propose to exempt parts and components for manufacture of such devices, so as to encourage domestic manufacturing of these devices.

Transparency in Electoral Funding

164. India is the world's largest democracy. Political parties are an essential ingredient of a multi-party Parliamentary democracy. Even 70 years after Independence, the country has not been able to evolve a transparent method of funding political parties which is vital to the system of free and fair elections. An attempt was made in the past by amending the provisions of the Representation of Peoples Act, the Companies Act and the Income Tax Act to incentivise donations by individuals, partnership firms, HUFs and companies to political parties. Both the donor and the donee were granted exemption from payment of tax if the accounts were transparently maintained and returns were filed with the competent authorities. Additionally, a list of donors who contributed more than ₹20,000/- to any party in cash or cheque is required to be maintained. The

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situation has only marginally improved since these provisions were brought into force. Political parties continue to receive most of their funds through anonymous donations which are shown in cash.

165. An effort, therefore, requires to be made to cleanse the system of political funding in India. Donors have also expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. I, therefore, propose the following scheme as an effort to cleanse the system of funding of political parties:

a) In accordance with the suggestion made by the Election Commission, the maximum amount of cash donation that a political party can receive will be ₹2000/- from one person.

b) Political parties will be entitled to receive donations by cheque or digital mode from their donors.

c) As an additional step, an amendment is being proposed to the Reserve Bank of India Act to enable the issuance of electoral bonds in accordance with a scheme that the Government of India would frame in this regard. Under this scheme, a donor could purchase bonds from authorised banks against cheque and digital payments only. They shall be redeemable only in the designated account of a registered political party. These bonds will be redeemable within the prescribed time limit from issuance of bond.

d) Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act.

Needless to say that the existing exemption to the political parties from payment of income-tax would be available only subject to the fulfilment of these conditions. This reform will bring about greater transparency and accountability in political funding, while preventing future generation of black money.

Ease of Doing Business

166. As an anti-avoidance measure, the provision of domestic transfer pricing in respect of related entities was brought in the Finance Act of 2012. Since then the number of entities being covered under domestic pricing has gone up substantially necessitating a longer scrutiny, which causes hardship to domestic companies. In order to reduce the compliance burden due to domestic transfer pricing provisions, I propose to restrict the scope of domestic transfer pricing only if one of the entities involved in related party transaction enjoys specified profit-linked deduction.

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167. I propose to increase the threshold limit for audit of business entities who opt for presumptive income scheme from ₹1 crore to ₹2 crores. Similarly, the threshold for maintenance of books for individuals and HUF is being increased from turnover of ₹10 lakhs to ₹25 lakhs or income from ₹1.2 lakhs to ₹2.5 lakhs.

168. In 2012, Income-tax Act was amended to provide for taxation of those transactions of transfer of shares or interest in a foreign entity deriving its value substantially from Indian assets. Apprehensions have been raised about some difficulties which arise because of this provision in case of transfer of stake of investors of India-based funds located abroad but investing in India-based companies.

169. In order to remove this difficulty, I propose to exempt Foreign Portfolio Investor (FPI) Category I & II from indirect transfer provision. I also propose to issue a clarification that indirect transfer provision shall not apply in case of redemption of shares or interests outside India as a result of or arising out of redemption or sale of investment in India which is chargeable to tax in India.

170. As on today, a TDS of 5% is being deducted from commission payable to individual insurance agents even if the income of some of them may be below taxable limit. I propose to exempt them from the requirement of TDS subject to their filing a self-declaration that their income is below taxable limit.

171. Last year, I had announced a new scheme for presumptive taxation for professionals with receipt upto ₹50 lakhs p.a. In respect of such assesses, they are being given further benefit in terms of paying advance tax in one instalment instead of four.

172. In order to allow the people to claim the refund expeditiously, the time period for revising a tax return is being reduced to 12 months from completion of financial year, at par with the time period for filing of return. Also the time for completion of scrutiny assessments is being compressed further from 21 months to 18 months for Assessment Year 2018-19 and further to 12 months for Assessment Year 2019-20 and thereafter.

Personal Income-Tax

173. While the Government is trying to bring within tax-net more people who are evading taxes, the present burden of taxation is mainly on honest tax payers and salaried employees who are showing their income correctly. Therefore, post-demonetisation, there is a legitimate expectation of this class of people to reduce their burden of taxation. Also an argument is

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made that if a nominal rate of taxation is kept for lower slab, many more people will prefer to come within the tax net.

174. I, therefore, propose to reduce the existing rate of taxation for individual assesses between income of ₹2.5 lakhs to ₹5 lakhs to 5% from the present rate of 10%. This would reduce the tax liability of all persons below ₹5 lakh income either to zero (with rebate) or 50% of their existing liability. In order not to have duplication of benefit, the existing benefit of rebate available to the same group of beneficiaries is being reduced to ₹2500 available only to assessees upto income of ₹3.5 lakhs. The combined effect of both these measures will mean that there would be zero tax liability for people getting income upto ₹3 lakhs p.a. and the tax liability will only be ₹2,500 for people with income between ₹3 and ₹3.5 lakhs. If the limit of ₹1.5 lakh under Section 80C for investment is used fully the tax would be zero for people with income of ₹4.5 lakhs. While the taxation liability of people with income upto ₹5 lakhs is being reduced to half, all the other categories of tax payers in the subsequent slabs will also get a uniform benefit of ₹12,500/- per person. The total amount of tax foregone on account of this measure is ₹15,500 crores.

175. In order to make good some of this revenue loss on account of this relief, I propose to levy a surcharge of 10% of tax payable on categories of individuals whose annual taxable income is between ₹50 lakhs and ₹1 crore. The existing surcharge of 15% of Tax on people earning more than ₹1 crore will continue. This is likely to give additional revenue of ₹2,700 crores.

176. In order to expand tax net, I also plan to have a simple one-page form to be filed as Income Tax Return for the category of individuals having taxable income upto ₹5 lakhs other than business income. Also a person of this category who files income tax return for the first time would not be subjected to any scrutiny in the first year unless there is specific information available with the Department regarding his high value transaction. I appeal to all citizens of India to contribute to Nation Building by making a small payment of 5% tax if their income is falling in the lowest slab of ₹2.5 lakhs to ₹5 lakhs.

177. Some other important proposals for amendment in Tax Laws which are not covered by me in my speech are given in **Annex III** of this speech.

Goods and Services Tax

178. There has been substantial progress towards ushering in GST, by far, the biggest tax reform since independence. Since the enactment of the Constitution (One Hundred and First Amendment) Act, 2016, the preparatory work for this path-breaking reform has been a top priority for

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the Government. In this context, several teams of officers both from the States and Central Board of Excise and Customs have been working tirelessly to give finishing touch to the Model GST law and rules and other details. Government on its part has promptly given effect to various provisions of the Constitutional Amendment Act, including constitution of the GST Council. Since then, the GST Council held 9 meetings to discuss various issues relating to GST, including broad contours of the GST rate structure, threshold exemption and parameters for composition scheme, details for compensation to States due to implementation of GST, examination of draft model GST law, draft IGST law and the Compensation Law and administrative mechanism for GST. It is my privilege to inform this august house that the GST Council has finalised its recommendations on almost all the issues based on consensus and after spirited debate and discussions. The preparation of IT system for GST is also on schedule. The extensive reach-out efforts to trade and industry for GST will start from 1st April, 2017 to make them aware of the new taxation system.

179. Centre, through the Central Board of Excise & Customs, shall continue to strive to achieve the goal of implementation of GST as per schedule without compromising the spirit of co-operative federalism. Implementation of GST is likely to bring more taxes both to Central and State Governments because of widening of tax net. I have preferred not to make many changes in current regime of Excise & Service Tax because the same are to be replaced by GST soon.

RAPID

180. In the Annual Conclave of Tax officers called '**Rajaswa Gyan Sangam**' held in June 2016, the Prime Minister had expressed his desire to bring reforms in tax administration in the form of an approach of **RAPID** which stands for Revenue, Accountability, Probity, Information and Digitisation. This approach precisely reflects the strategy of Tax Department which is now formulated. While revenue considerations always remain the focus of Revenue Department, we are trying to bring in maximum use of Information Technology to remove human contact with assesses as well as to plug tax avoidance. We will try to maximise our efforts for **e-assessment** in the coming year. We are also using a lot of data mining capability, both in-house and outsourced. We plan to enforce greater accountability of officers of Tax Department for specific act of commission and omission. I would like to assure everyone that honest, tax-compliant person would be treated with dignity and courtesy.

181. Madam Speaker, my direct tax proposals for exemptions, etc. would result in revenue loss of ₹22,700 crore but after counting for revenue gain

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of ₹2,700 crore for additional resource mobilisation proposal, the net revenue loss in direct tax would come to ₹20,000 crore. There is no significant loss or gain in my indirect tax proposals.

CONCLUSION

182. Madam Speaker, I have outlined the Budget proposals under our overarching agenda: "Transform, Energise and Clean India". Our emphasis will now be on implementing all these proposals for the benefit of the farmers, the poor and the underprivileged sections of our society.

183. Madam Speaker, it is said: "When my aim is right, when my goal is in sight, the winds favour me and I fly". There is no other day, which is more appropriate for this, than today.

184. With these words, Madam Speaker, I commend the Budget to the House.

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Annex I to Part A

Other measures in the Financial Sector

1. The commodities and securities derivative markets will be further integrated by integrating the participants, brokers, and operational frameworks.

2. The process of registration of financial market intermediaries like mutual funds, brokers, portfolio managers, etc. will be made fully online by SEBI. This will improve ease of doing business.

3. A common application form for registration, opening of bank and demat accounts, and issue of PAN will be introduced for Foreign Portfolio Investors (FPIs). SEBI, RBI and CBDT will jointly put in place the necessary systems and procedures. This will greatly enhance operational flexibility and ease of access to Indian capital markets.

4. Steps will be taken for linking of individual demat accounts with Aadhar.

5. Presently institutions such as banks and insurance companies are categorised as Qualified Institutional Buyers (QIBs) by SEBI. They are eligible for participation in IPOs with specifically earmarked allocations. It is now proposed to allow systemically important NBFCs regulated by RBI and above a certain net worth, to be categorised as QIBs. This will strengthen the IPO market and channelize more investments.

6. Listing and trading of Security Receipts issued by a securitisation company or a reconstruction company under the SARFAESI Act will be permitted in SEBI registered stock exchanges. This will enhance capital flows in to the securitisation industry and will particularly be helpful to deal with bank NPAs.

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Annex II-A to Part A

ALLOCATIONS OF IMPORTANT MINISTRIES, SECTORS and VULNERABLE SECTIONS				
		(In Crores of Rupees)		
Sl. No.	**Name of the Ministry**	**BE 2016-2017**	**RE 2016-2017**	**BE 2017-2018**
1	Ministry of Agriculture and Farmers' Welfare	44485	48072	51026
2	Ministry of Development of North Eastern Region	2430	2524	2682
3	Ministry of Drinking Water and Sanitation	14010	16512	20011
4	Ministry of Health and Family Welfare	38206	39688	48853
5	Ministry of Housing and Urban Poverty Alleviation	5411	5285	6406
6	Ministry of Human Resource Development	72394	73599	79686
7	Ministry of Micro, Small and Medium Enterprises	3465	5463	6482
8	Ministry of Minority Affairs	3827	3827	4195
9	Ministry of New and Renewable Energy	5036	4360	5473
10	Ministry of Railways	45000	46155	55000
11	Ministry of Road Transport and Highways	57976	52447	64900
12	Ministry of Rural Development	87765	97760	107758
13	Ministry of Skill Development and Entrepreneurship	1804	2173	3016
14	Ministry of Social Justice and Empowerment	7350	7353	7763
15	Ministry of Tribal Affairs	4827	4827	5329
16	Ministry of Urban Development	24523	32550	34212
17	Ministry of Water Resources, River Development and Ganga Rejuvenation	6201	4756	6887
18	Ministry of Women and Child Development	17408	17640	22095

ALLOCATION FOR WELFARE OF SC, ST, OTHER VULNERABLE GROUPS, WOMEN, CHILDREN AND NORTH EASTERN REGION				
	Description of the Allocation	**BE 2016-2017**	**RE 2016-2017**	**BE 2017-2018**
I	Allocation for the welfare of **Scheduled Tribes** across all ministries	24005	25602	31920
II	Allocation for the welfare of **Scheduled Castes** across all ministries	38833	40920	52393

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III	Allocation for the Welfare of **Other Vulnerable Groups**	1873	1892	1976
IV	Allocation for **North Eastern Region** across all ministries	29125	32180	43245
V	Allocation under various schemes for **the welfare of women** across all ministries	90770	96332	113327
VI	Allocation under various schemes for the **welfare of Children** across all ministries	65758	66249	71305

Sector Totals

(In Crores of Rupees)

Sl No.	Sectors	BE 2016-2017	RE 2016-2017	BE 2017-2018
1	Agriculture and Allied sectors	48572	52821	58663
2	Rural Development	102543	114947	128560
3	Infrastructure	348952	358634	396135
3a	of which Transport	216268	216903	241387
4	Social sectors	168100	176225	195473
4a	Education and Health	112138	114806	130215
4b	Social sectors with welfare orientation	55962	61419	65258
5	Employment Generation, Skill and Livelihood	12141	14870	17273
6	Scientific Ministries	33467	34359	37435

Source : Expenditure Profile and Expenditure Budget 2017-18

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Annex II-B to Part A

ALLOCATION FOR IMPORTANT SCHEMES

Sl No.	Name of scheme	(In Crores of Rupees) BE 2016-2017	RE 2016-2017	BE 2017-2018
1	Mahatma Gandhi National Rural Employment Guarantee Programme	38500	47499	48000
2	Pradhan Mantri Awas Yojna	20075	20936	29043
3	National Rural Drinking Water Mission	5000	6000	6050
4	National Social Assistance Progamme	9500	9500	9500
5	Pradhan Mantri Gram Sadak Yojna	19000	19000	19000
6	National Education Mission including Sarva Shiksha Abhiyan	28330	28251	29556
7	National Programme of Mid-Day Meal in Schools	9700	9700	10000
8	Integrated Child Development Services	16260	16580	20755
9	National Health Mission	20762	22598	27131
10	Swachh Bharat Mission	11300	12800	16248
11	National Livelihood Mission - Ajeevika	3325	3334	4849
12	Urban Rejuvenation Mission : AMRUT & Smart Cities Mission	7296	9559	9000
13	Green Revolution	12560	10360	13741
14	White Revolution	1138	1312	1634
15	Blue Revolution	247	392	401
16	Pradhan Mantri Krishi Sinchai Yojana (PMKSY) aggregated across three ministries	5767	5189	7377
17	Mission for Empowerment and Protection for Women	907	821	1089
18	Environment, Forestry and Wildlife	850	819	962
19	Employment Generation Programmes other than MGNREGS, Including PM Kaushal Vikas Yojana, ATUFS, PM Mudra Yojana, PMEGP and ASPIRE	8133	10682	11640
20	Pradhan Mantri Fasal Bima Yojana	5500	13240	9000

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Annex II-B to Part A

ALLOCATION FOR IMPORTANT SCHEMES				
		(In Crores of Rupees)		
Sl No.	Name of scheme	BE 2016-2017	RE 2016-2017	BE 2017-2018
21	Optical Fibre Cable based network for Defence Services	2710	3210	3000
22	Price Stabilisation Fund for pulses	900	3400	3500
23	Bharatnet	0	6000	10000
24	Metro Projects	10000	15700	18000
25	Recapitalization of Public Sector Banks according to the Indradhanush scheme	25000	25000	10000
26	Integrated Power Development Scheme and Deen Dayal Upadhyaya Gram Jyoti Yojna	8500	7874	10635
27	Namami Gange- National Ganga Plan	2150	1441	2250
28	Sagarmala	450	406	600
29	LPG connection to poor households	2000	2500	2500

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Annex II-C to Part A

Resources Transferred to State and UTs with Legislature					
		(In Crores of Rupees)			
Sl. No.		**Actuals 2015-16**	**BE 2016-17**	**RE 2016-17**	**BE 2017-18**
1	Devolution of states' share in taxes	506193	570337	608000	674565
2	Finance Commission Transfers	84579	100646	99115	103101
3	Other Central Transfers to States	238572	254371	277649	303412
4	**Total Central Transfers to States (Gross) (1+2+3)**	829344	925354	984764	1081078
5	Total Central Transfers to UTs with Legislature (Gross)	5139	5320	5547	3996
6	**Total Transfers (Gross) (4+5)**	**834483**	**930674**	**990311**	**1085074**
7	**Recovery of Loans and Advances (a+b)**	**11513**	**9473**	**9163**	**9516**
a	*States*	11454	9028	8730	9083
b	*UTs*	59	445	433	433
8	Total Central Transfers to States (Net) (4-7a)	817890	916326	976034	1071995
9	Total Central Transfers to UTs with Legislature (Net) (5-7b)	5080	4875	5114	3563
10	**Total Transfers from Centre (Net) (8+9)**	**822970**	**921201**	**981148**	**1075558**
	In addition				
11	Special State Government Securities Issued from National Small Savings Fund (NSSF)*	58750	26375	13000	15000

* Only Madhya Pradesh, Kerala, Arunachal Pradesh and Delhi have chosen to receive loans from NSSF starting from 2016-17.

Source: Budget at a Glance 2017-18.

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Annex III to Part B of Budget Speech

Direct Taxes:

1. **Additional Revenue Mobilisation (ARM) and Anti-abuse Measures**

1.1 It is proposed to extend the provisions of section 115BBDA of the Income-tax Act which provides for levy of tax at the rate of ten per cent. on dividend income exceeding ₹ 10 lakh, to all resident persons except domestic companies or trust or institution or fund registered under section 12AA or referred to in section 10(23C). Presently, these provisions are applicable only to the individuals, Hindu undivided family (HUF) and firms.

1.2 It is proposed to widen the scope of section 56 of the Income-tax Act to provide that any money, immovable property or specified movable property received without consideration or with inadequate consideration, by any person, subject to certain exemption and exceptions, shall be taxable if its value exceeds rupees fifty thousand.

1.3 It is proposed to provide that in case of transfer of unquoted equity shares, where the fair market value, determined in the prescribed manner is less than the consideration received, such fair market value shall be the deemed value of consideration for the purpose of computation of capital gains.

1.4 It is proposed to restrict the exemption from long term capital gains in case of transfer of listed shares by providing that the exemption, subject to notification of certain exceptions, shall be available if security transaction tax has been paid at the time of acquisition of such shares where they have been acquired after 1st October, 2004.

1.5 It is proposed to introduce a new provision in the Income-tax Act to provide for tax deduction at source at the rate of five per cent. by an individual or HUF, other than those whose books of account are required to be audited, while making payment of rent of an amount exceeding ₹ 50,000 per month. It is also proposed to provide that such tax shall be deducted and deposited only once in a financial year through a challan-cum-statement. Further, the deductor shall not be required to obtain TAN or file any separate TDS return for this purpose.

1.6 In order to align the transfer pricing provisions with the OECD transfer pricing guidelines and international best practices, it is proposed to insert a new section to provide that the assesse shall make secondary adjustment where the primary adjustment to the transfer price has been made in certain cases. The provision shall apply if the primary adjustment exceeds one crore rupees and the excess money attributable to the adjustment is not brought to India within the prescribed time.

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1.7 In order to address the issue of thin capitalisation, it is proposed to provide that the interest paid by an Indian company or permanent establishment of a foreign company, in excess of thirty percent of earnings before interest, taxes, depreciation and amortisation (EBITDA), or interest paid to its associated enterprise, whichever is less, shall not be allowed as deduction in computing its taxable profit. It is also proposed to allow carry forward and set off of the interest so disallowed for eight assessment years.

1.8 In order to address the existing anomaly of interest deduction in respect of let out property vis-à-vis self-occupied property, it is proposed to restrict set off of loss from house property against income under any other head during the current year up to Rs two lakhs. The loss not so set off would be allowed to be carried forward for set off against house property income for eight assessment years.

1.9 It is proposed that donation by an entity registered under section 12A or approved under section 10(23C), to other entity, registered under section 12A, with the direction that such donation shall form part of the corpus, shall not be treated as application of income for charitable purposes.

2. Rationalisation Measures

2.1 It is proposed to provide that in case of foreign company, sale of leftover stock of crude oil in case of strategic petroleum reserve after the expiry of agreement or the arrangement, subject to fulfilment of certain conditions, shall not be liable to tax in India.

2.2 It is proposed to provide a concessional tax rate of ten per cent. in case of income arising from sale of carbon credit.

2.3 It is proposed to exempt government, foreign missions and state PSUs engaged in business of transportation of passengers from Tax Collection at Source (TCS) provisions relating to purchase of vehicles.

2.4 It is proposed to provide that the fair market value of the asset which has been taken into account for the purpose of computation of accreted income on which tax has been paid in accordance with provisions of Chapter XII-EB of the Income-tax Act, shall be taken as the cost of acquisition of that asset.

2.5 It is proposed to modify the conditions of special taxation regime for off shore funds under section 9A of the Income-tax Act so as to provide that the maintenance of minimum fund size would not be necessary in the year in which the fund is being wound up.

2.6 In line with exemption available to the Prime Minister's Relief Fund and certain other funds, it is proposed to provide that the income of the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund shall be exempt from tax.

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2.7 It is proposed to do away with the provisions enabling the Assessing Officer not to process the return and thus withhold the refund in cases where the return is selected for scrutiny till the completion of assessment. It is however proposed that in cases where grant of refund is likely to adversely affect the interest of revenue, it can be withheld with the approval of the higher authority after recording the reasons in writing.

2.8 It is proposed to provide that certain entities, like, Investor Protection Funds, Core Settlement Guarantee Fund, Tea/Coffee/Rubber Boards, MPEDA, or APDEA; enjoying exemption from levy of income-tax under section 10 of the Income-tax Act shall be required to furnish return of their income.

2.9 In order to ensure timely filing of returns of income, it is proposed to levy a fee in case of delay in filing the return.

2.10 It is proposed to provide that if an accountant or a merchant banker or a registered valuer, furnishes incorrect information in a report or certificate, he shall be liable to a penalty of ten thousand rupees for each such default.

2.11 It is proposed to provide that where the amount of foreign tax credit (FTC) allowed against the tax paid under sections 115JB or 115JC of the Income-tax Act exceeds the amount of FTC admissible against the tax payable by the assesse on his income in accordance with the other provisions of the Act, such excess credit shall be ignored while computing the amount of credit under section 115JAA or section 115JD.

2.12 In a case where the foreign tax credit has not been granted to the assesse on the ground that payment of such tax is in dispute, it is proposed to provide, subject to certain conditions, additional time to the Assessing Officer for allowing the said tax credit after such dispute is settled.

2.13 It is proposed to provide that no person shall receive payment or aggregate of payments of an amount of three lakh rupees or more from a person in a day, or in respect of a single transaction, or in respect of transactions relating to one event or occasion, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. Such restriction shall not apply to Government, banks or such other persons or class of persons or receipts notified by the Central Government. It is also proposed to provide for a penalty in case of contravention of this provision.

2.14 It is proposed to clarify that provisions relating to tax deduction at source shall not apply to exempt compensation received under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

2.15 It is proposed to lower the rate of deduction of tax in case of payments made to a person engaged only in the business of operation of call centre.

2.16 It is proposed to provide tax neutrality in case of conversion of preference shares of a company into equity shares of that company.

2.17 It is proposed to provide that the cost of acquisition of share of an Indian company in the hands of demerged foreign company in a tax neutral

demerger, shall be taken as the cost of acquisition in the hands of resulting foreign company.

2.18 It is proposed to provide for grant of interest in case of refund of excess payment of TDS.

2.19 It is proposed to merge the Authority for Advance Ruling (AAR) for Income-Tax with AAR for Customs, Central Excise and Service Tax; and create common AAR. It is also proposed to amend the qualifications for appointment of Chairman and Members.

2.20 It is proposed to make the orders passed by the authority under section 10(23C) of the Income-tax Act, appealable before the Tribunal.

2.21 It is proposed to authorise the Central Board of Direct Taxes (CBDT), to issue directions or instructions in order to remove hardships faced by the taxpayers in connection with imposition of penalty relating to tax deduction or collection at source.

2.22 It is proposed to amend the provisions relating to computation of book profit for the purpose of levy of minimum alternate tax (MAT) so as to align it with the Indian Accounting Standards (Ind-AS).

2.23 It is proposed to clarify that the amendment made by the Finance Act, 2016 in Section 112 of the Income-tax Act providing for concessional rate of tax in respect of transfer of share of a private limited company shall be applicable retrospectively from assessment year 2013-14.

2.24 It is proposed to amend section 10AA of the Income-tax Act so as to provide that the amount of deduction referred therein shall be allowed from the total income computed in accordance with the provisions of the Act before giving effect to the provisions of the said section and that the said deduction shall not exceed the total income.

2.25 It is proposed to clarify that in the case of furnishing of information relating to payment to a non-resident of any sum whether or not chargeable to tax, the "person responsible for paying" shall be the payer himself, or, if the payer is a company, the company itself including the principal officer thereof.

2.26 It is proposed to provide that where any 'term' used in an agreement entered into under sub-section (1) of Section 90 and 90A of the Income-tax Act, is defined under the said agreement, the said term shall be assigned the meaning as provided in the said agreement and where the term is not defined in the agreement, but is defined in the Act, it shall be assigned the meaning as defined in the Act or any technical explanation issued by the Central Government.

2.27 It is proposed to provide that where the capital asset referred to in section 35AD of the Income-tax Act is used for an ineligible business and the benefit of said section is withdrawn, the actual cost to the assessee in respect of such asset shall be the actual cost to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in

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force that would have been allowable had the asset been used for the purposes of business since the date of its acquisition.

2.28 It is proposed to provide that a trust or an institution, which has been granted registration, and, has adopted or undertaken modification of the objects subsequently which do not conform to the conditions of registration, shall be required to obtain fresh registration.

2.29 In order to strengthen the TCS regime, it is proposed to provide that the collectee shall furnish his PAN to the collector, failing which, tax shall be collected at a higher rate.

2.30 In order to provide parity between an individual who is an employee and an individual who is self-employed, it is proposed to provide that the self-employed individual shall be eligible for deduction upto twenty per cent of his gross total income in respect of contribution made to National Pension System Trust.

2.31 It is proposed to provide that the authorised officer can, subject to conditions as specified, provisionally attach a property for a period of six months in order to protect the interest of revenue. It is also proposed to provide that he can make a reference to the valuation officer for the purpose of estimation of FMV of a property.

2.32 It is proposed to authorise the Joint Director, Deputy Director or the Assistant Director of Income-tax to call for information for the purpose of any enquiry without seeking approval of the higher authority.

2.33 It is proposed to expand the provision of section 133A of the Income-tax Act so as to include any place at which activity for charitable purpose is carried on.

2.34 It is proposed to authorise the CBDT to frame a scheme for centralised issuance of notice calling for information and documents for the purpose of verification of information in its possession, processing of such documents and making the outcome thereof available to the Assessing Officer.

2.35 In order to remove hardship, it is proposed to omit section 197(C) of the Finance Act, 2016 which provided for assessment of undisclosed income relating to any period prior to commencement of the Income Declaration Scheme, 2016. However, in search cases, it is proposed to provide that in case tangible evidence is found during the search, the Assessing Officer can assess income upto ten years preceding the year in which search took place.

2.36 In order to strengthen the TDS provisions, it is proposed to provide that a disallowance shall be made in respect of an expenditure incurred against income from other sources unless tax has been deducted thereon at applicable rates.

2.37 In order to maintain the confidentiality of the source of the information and the identity of the informer, it is proposed to clarify that the reasons to believe as recorded by the income-tax authority authorising a search

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operation or a requisition of books of account or asset, shall not be disclosed to any person, authority or appellate tribunal.

2.38 It is proposed to provide that in case of unit in the consolidated plan of a mutual fund scheme received in lieu of unit in the consolidating plan, the actual cost and the period of holding shall be the cost and the period of holding of the unit in the consolidating plan.

2.39 It is proposed to amend the provision of clause 4 of section 10 of the Income-tax Act, 1961 so as to make the correct reference to Foreign Exchange Management Act (FEMA).

2.40 It is proposed to provide a sun set clause in respect of deduction allowed to certain persons in respect of investment in listed equity shares and listed units of an equity oriented fund.

2.41 It is proposed to exempt capital gains arising out of transfer of a rupee denominated bond by a non-resident to a non-resident.

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Indirect Taxes

I. PROPOSALS INVOLVING CHANGE IN DUTY / TAX RATES:
CUSTOMS:

		Commodity	Rate of Duty	
			From	To
I.	Incentivizing domestic value addition, 'Make in India'			
A.	Reduction in Customs duty on inputs and raw materials to reduce costs			
		Mineral fuels and Mineral oils		
	1.	Liquefied Natural Gas	BCD – 5%	BCD – 2.5%
		Chemicals & Petrochemicals		
	2.	Medium Quality Terephthalic Acid (MTA) & Qualified Terephthalic Acid (QTA)	BCD – 7.5%	BCD – 5%
		Metals		
	3.	Nickel	BCD – 2.5%	BCD – Nil
		Finished Leather		
	4.	Vegetable tanning extracts, namely, Wattle extract and Myrobalan fruit extract	BCD – 7.5%	BCD – 2.5%
		Capital Goods		
	5.	Ball screws, linear motion guides and CNC systems for use in the manufacture of CNC machine tools, subject to actual user condition	Ball screws and liner motion guides BCD – 7.5% CNC systems BCD – 10%	BCD – 2.5%
		Renewable Energy		
	6.	All items of machinery required for fuel cell based power generating systems to be set up in the country or for demonstration purposes, subject to certain specified conditions	BCD – 10% /7.5% CVD – 12.5%	BCD – 5% CVD – 6%
	7.	All items of machinery required for balance of systems operating on biogas/ bio-methane/ by-product hydrogen, subject to certain specified conditions	BCD – 10% /7.5% CVD – 12.5%	BCD – 5% CVD – 6%
		Miscellaneous		
	8.	All parts for use in the manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable BCD, CVD	BCD – 5% CVD – 6%
	9.	All inputs for use in the manufacture of LED Driver and MCPCB for LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable BCD	5%

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		Commodity	Rate of Duty	
			From	To
B.	Changes in Customs and Excise / CV duty to address the problem of duty inversions in certain sectors			
		Chemicals & Petrochemicals		
	10.	o-Xylene	BCD – 2.5%	BCD – Nil
	11.	2-Ethyl Anthraquinone [2914 69 90] for use in manufacture of hydrogen peroxide, subject to actual user condition	BCD – 7.5%	BCD – 2.5%
	12.	Vinyl Polyethylene Glycol (VPEG) for use in manufacture of Poly Carboxylate Ether, subject to actual user condition	BCD – 10%	BCD – 7.5%
		Textiles		
	13.	Nylon mono filament yarn for use in monofilament long line system for Tuna fishing, subject to certain specified conditions	BCD – 7.5%	BCD – 5%
		Metals		
	14.	Co-polymer coated MS tapes / stainless steel tapes for manufacture of specified telecommunication grade optical fibres or optical fibre cables, subject to actual user condition	BCD – Nil	BCD – 10%
	15.	MgO coated cold rolled steel coils [7225 19 90] for use in the manufacture of CRGO steel, subject to actual user condition	BCD – 10%	BCD – 5%
	16.	Hot Rolled Coils [7208] for use in the manufacture of welded tubes and pipes falling under heading 7305 or 7306, subject to actual user condition	BCD – 12.5%	BCD – 10%
		Automobiles		
	17.	Clay 2 Powder (Alumax) for use in ceramic substrate for catalytic convertors, subject to actual user conditon	BCD – 7.5%	BCD – 5%
		Renewable Energy		
	18.	Solar tempered glass for use in the manufacture of solar cells/panels/modules	BCD – 5%	BCD – Nil
	19.	Parts/raw materials for use in the manufacture of solar tempered glass for use in solar photovoltaic cells/modules, solar power generating equipment or systems, flat plate solar collector, solar photovoltaic module and panel for water pumping and other applications, subject to	CVD – 12.5%	CVD – 6%

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		Commodity	Rate of Duty	
			From	To
		actual user condition		
	20.	Resin and catalyst for use in the manufacture of cast components for Wind Operated Energy Generators [WOEG], subject to actual user condition	BCD – 7.5% CVD – 12.5% SAD – 4%	BCD – 5% CVD – Nil SAD – Nil
		Miscellaneous		
	21.	Membrane Sheet and Tricot / Spacer for use in the manufacture of RO membrane element for household type filters, subject to actual user condition	CVD – 12.5%	CVD – 6%
C.	**Changes in Customs duty to provide adequate protection to domestic industry**			
		Food Processing		
	22.	Cashew nut, roasted, salted or roasted and salted	BCD – 30%	BCD – 45%
		Electronics / Hardware		
	23.	Populated Printed Circuit Boards (PCBs) for use in the manufacture of mobile phones, subject to actual user condition	SAD – Nil	SAD – 2%
		Miscellaneous		
	24.	RO membrane element for household type filters	BCD – 7.5%	BCD – 10%
D.	**Promotion of cashless transactions and promote domestic manufacturing of devices used therefor**			
	25.	a) Miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), b) Micro ATM as per standards version 1.5.1, c) Finger Print Reader / Scanner, and d) Iris Scanner	Applicable BCD, CVD SAD	BCD – Nil CVD – Nil SAD – Nil
	26.	Parts and components for manufacture of: a) miniaturized POS card reader for m-POS (not including mobile phones or tablet computer), b) micro ATM as per standards version 1.5.1, c) Finger Print Reader / Scanner, and d) Iris Scanner	Applicable BCD, CVD SAD	BCD – Nil CVD – Nil SAD – Nil
II.	**Imposition of export duty to conserve domestic resources**			
	27.	Other aluminium ores, including laterite	Nil	15%
III.	**Improving ease of doing business and Export Promotion**			
	28.	De-minimis customs duties exemption limit for goods imported through parcels, packets and letters	Duty payable not exceeding Rs.100 per consignment	CIF value not exceeding Rs.1000 per consignment
	29.	Limit of duty free import of eligible items	3% of FOB	5% of FOB

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		Commodity	Rate of Duty	
			From	To
		for manufacture of leather footwear or synthetic footwear or other leather products for use in the manufacture of said goods for export	value of said goods exported during the preceding financial year	value of said goods exported during the preceding financial year
IV.	**Anti-avoidance measure**			
	30.	Silver medallion, silver coins, having silver content not below 99.9%, semi-manufactured form of silver and articles of silver	CVD – Nil	CVD – 12.5%

Note: (a) "Basic Customs Duty" means the customs duty levied under the Customs Act, 1962.

(b) "CVD" means the Additional Duty of Customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975.

(c) "SAD" means the Special Additional Duty of Customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975.

(d) "Export duty" means duty of Customs leviable on goods specified in the Second Schedule to the Customs Tariff Act, 1975.

EXCISE

		Commodity	Rate of Duty	
			From	To
I.	**Public Health**			
A.	**Tobacco and Tobacco Products**			
	1.	Cigar and cheroots	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
	2.	Cigarillos	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
	3.	Cigarettes of tobacco substitutes	Rs.3755 per thousand	Rs.4006 per thousand
	4.	Cigarillos of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
	5.	Others of tobacco substitutes	12.5% or Rs.3755 per thousand, whichever is higher	12.5% or Rs.4006 per thousand, whichever is higher
	6.	Paper rolled birls – handmade	Rs.21 per thousand	Rs.28 per thousand
	7.	Paper rolled biris –	Rs.21 per thousand	Rs.78 per thousand

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		Commodity	Rate of Duty	
			From	To
		machine made		
II.	Incentivizing domestic value addition, 'Make in India'			
A.	Renewable Energy			
	8.	All items of machinery required for balance of systems operating on biogas/ bio-methane/ by-product hydrogen	12.5%	6%
B.	Miscellaneous			
	9.	Membrane Sheet and Tricot/Spacer for use in the manufacture of RO membrane element for household type filters, subject to actual user condition	12.5%	6%
	10.	All parts for use in the manufacture of LED lights or fixtures, including LED lamps, subject to actual user condition	Applicable duty	6%
	11.	a. Waste and scrap of precious metals or metals clad with precious metals arising in course of manufacture of goods falling in Chapter 71 b. Strips, wires, sheets, plates and foils of silver c. Articles of silver jewellery, other than those studded with diamond, ruby, emerald or sapphire d. Silver coin of purity 99.9% and above, bearing a brand	Nil	Nil, subject to the condition that no credit of duty paid on inputs or input services or capital goods has been availed by manufacturer of such goods

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		Commodity	Rate of Duty	
			From	To
		name when manufactured from silver on which appropriate duty of customs or excise has been paid		
III.	**Promotion of cashless transactions and promote domestic manufacturing of devices used therefor**			
	12.	a) Miniaturized POS card reader for m-POS (not including mobile phones or tablet computers), b) micro ATM as per standards version 1.5.1, c) Finger Print Reader / Scanner, and d) Iris Scanner	Applicable duty	Nil
	13.	Parts and components for manufacture of: a) Miniaturized POS card reader for m-POS (not including mobile phones or tablet computers), b) Micro ATM as per standards version 1.5.1, c) Finger Print Reader / Scanner, and d) Iris Scanner	Applicable duty	Nil

Note: "Basic Excise Duty" means the excise duty set forth in the First Schedule to the Central Excise Tariff Act, 1985.

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CHANGES IN RATE OF ADDITIONAL DUTY LEVIED UNDER SECTION 85 OF THE FINANCE ACT, 2005

		Commodity	Rate of duty	
			From	To
A.	Pan Masala			
	1.	Pan Masala	6%	9%
B.	Tobacco and Tobacco Products			
	2.	Unmanufactured tobacco	4.2%	8.3%
	3.	Non-filter Cigarettes of length not exceeding 65mm	Rs.215 per thousand	Rs.311 per thousand
	4.	Non-filter Cigarettes of length exceeding 65mm but not exceeding 70mm	Rs.370 per thousand	Rs.541 per thousand
	5.	Filter Cigarettes of length not exceeding 65mm	Rs.215 per thousand	Rs.311 per thousand
	6.	Filter Cigarettes of length exceeding 65mm but not exceeding 70mm	Rs.260 per thousand	Rs.386 per thousand
	7.	Filter Cigarettes of length exceeding 70mm but not exceeding 75mm	Rs.370 per thousand	Rs.541 per thousand
	8.	Other Cigarettes	Rs.560 per thousand	Rs.811 per thousand
	9	Chewing tobacco (including filter khaini)	6%	12%
	10.	Jarda scented tobacco	6%	12%
	11.	Pan Masala containing Tobacco (Gutkha)	6%	12%

SERVICE TAX

	S. No.	Changes	Existing	Proposed
A.	Relief to the armed forces of the Union from service tax			
	1.	Services provided or agreed to be provided by the Army, Naval and Air Force Group Insurance Funds by way of life insurance to members of the Army, Navy and Air Force under the Group Insurance Schemes of the Central Government is being exempted from service tax from 10th September, 2004 (the date when the services of life insurance became taxable).	14%	Nil

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B.	**Dispute resolution, certainty of taxation and avoidance of litigation**			
	1.	Notification No. 41/2016-ST dated 22.09.2016, which has exempted from service tax, one time upfront amount (called as premium, salami, cost, price, development charges or by whatever name) payable for grant of long-term lease of industrial plots (30 years or more) by State Government industrial development corporations/undertakings to industrial units, is proposed to be made effective from 1.6.2007 (the date when the services of renting of immovable property became taxable).	14%	Nil
	2.	Rule 2A of the Service Tax (Determination of Value) Rules, 2006 is proposed to be amended from 01.07.2010 so as to make it clear that value of service portion in execution of works contract involving transfer of goods and land or undivided share of land, as the case may be, shall not include value of property in such land or undivided share of land.	4.2%	4.2%
C.	**Promotion of Regional Connectivity Scheme of Ministry of Civil Aviation**			
	1.	Under the Regional Connectivity Scheme (RCS), exemption from service tax is being provided in respect of the amount of viability gap funding (VGF) payable to the airline operator for providing the services of transport of passengers by air, embarking from or terminating in a Regional Connectivity Scheme (RCS) airport, for a period of one year from the date of commencement of operations of the Regional Connectivity Scheme (RCS) airport as notified by Ministry of Civil Aviation.	14%	Nil
D.	**Rationalization Measures**			
	1.	The exemption in respect of services provided by Indian Institutes of Management (IIMs) by way of two year full time residential Post Graduate Programmes (PGP) in Management for the Post Graduate Diploma in Management (PGDM), to which admissions are made on the basis of the Common Admission Test (CAT), conducted by IIMs, is being extended to include non-residential programmes.	14%	Nil
	2.	Explanation-I (e) to Rule 6 of CENVAT Credit Rules, 2004 is being amended so as to exclude banks and financial institutions including non-banking financial companies engaged in providing services by way of extending deposits, loans or advances from its ambit.		

	3.	The Negative List entry in respect of "services by way of carrying out any process amounting to manufacture or production of goods excluding alcoholic liquor for human consumption", in the Finance Act, 1994, is proposed to be omitted and instead placed in the exemption notification. Consequently, clause (40) of section 65B of the Finance Act, which defines '*process amounting to manufacture*' is also proposed to be omitted and instead placed in the exemption notification.	Nil	Nil

AMENDMENT IN THE FIRST SCHEDULE TO THE CUSTOMS TARIFF ACT, 1975

S. No.	Amendment
A.	**Amendments not affecting rates of duty**
1.	The following amendments are being carried out to: (i) Delete tariff items 1302 32 10 and 1302 32 20 and entries relating thereto and create new tariff items 1106 10 10 and 1106 10 90, in relation to Guar meal and its products so as to harmonize the Customs Tariff with HS Nomenclature. (ii) Create new tariff item 1511 90 30 for Refined bleached deodorized palm stearin, so as to harmonize Customs Tariff in accordance with WCO classification decision. (iii) Substitute tariff items 3823 11 11 to 3823 11 90 and entries relating thereto with tariff item 3823 11 00. (iv) Substitute tariff items 3904 10 10 to 3904 22 90 with tariff items 3904 10 10 to 3904 22 00 in relation to the PVC Resin.
2.	Chapter Note (4) of Chapter 98 is being amended so as to remove the non-applicability of headings 9803 and 9804 to goods imported through courier service. Also, heading 9804 is being amended so as to extend the classification of personal imports by courier, sea, or land under this heading.

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ANNEXURE R/38

[illegible]

Year	[illegible] Description of the use of SSN authorized [illegible]
1935	required the issuance of an account number to each employee covered by the Social Security program(1).
1943	• All Federal components to use the SSN "exclusively" whenever the component found it advisable to set up a new identification system for individuals(2). • The Social Security Board to cooperate with Federal uses of the number by issuing and verifying numbers for other Federal agencies
1961	The Civil Service Commission adopted the SSN as an official Federal employee identifier (3).
1962	The Internal Revenue Service adopted the SSN as its official taxpayer identification number (4).
1964	Treasury Department, via internal policy, required buyers of Series H savings bonds (5) to provide their SSNs.
1965	Medicare: It became necessary for most individuals age 65 and older to have an SSN (6).
1966	The Veterans Administration began to use the SSN as the hospital admissions number (7) and for patient record keeping.
1969	The Department of Defense adopted the SSN in lieu of the military service number for identifying Armed Forces personnel.
1970	Bank Records and Foreign Transactions Act (P.L. 91-508) required all banks, savings and loan associations, credit unions and brokers/dealers in securities to obtain the SSNs of all of their customers (8). Also, financial institutions were required to file a report with the IRS, including the SSN of the customer, for any transaction involving more than $10,000.
1976	To allow use by the States of the SSN in the administration of any tax (9), general public assistance (10), driver's license (11) or motor vehicle registration law (12) within their jurisdiction and to authorize the States to require individuals affected by such laws to furnish their SSNs to the States:
1976	amended section 6109 of the Internal Revenue Code to provide that the SSN be used as the tax identification number (TIN) for all tax purposes.
1977	Food Stamp Act of 1977 (P.L. 95-58) required disclosure of SSNs of all household members as a condition of eligibility for participation in the food stamp program (13).
1981	Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35) required the disclosure of the SSNs of all adult members in the household of children applying to the school lunch program (14).
1981	Section 5 required any Federal, State or local government agency to furnish the name and SSN of prisoners convicted of a felony to the Secretary of HHS, to enforce suspension of disability benefits to certain imprisoned felons (15).
1982	Debt Collection Act (P.L. 97-365) required that all applicants for loans under any Federal loan program (16) furnish their SSNs to the agency supplying the loan
1983	The Interest and Dividend Tax Compliance Act (P.L. 98-67) requires SSNs for all interest-bearing accounts (17) and provides a penalty of $50 for all individuals who fail to furnish a correct TIN (usually the SSN).
1984	Amended the Social Security Act to establish an income and eligibility verification system involving State agencies (18) administering the AFDC, Medicaid, unemployment compensation, the food stamp programs, and State programs under a plan approved under title I, X, XIV, or XVI of the Act. States were permitted to require the SSN as a condition of eligibility for benefits under any of these programs.
1984	Amended Section 6050I of the IRC to require that persons engaged in a trade or business (19) file a report (including SSNs) with the IRS for cash transactions over $10,000.
1986	(P.L. 99-514) required individuals filing a tax return due after December 31, 1987, to include the taxpayer identification number--usually the SSN--of each dependent age 5 or older (20).

1986	Commercial Motor Vehicle Safety Act of 1986 (P.L. 99-570) authorized the Secretary of Transportation to require the use of the SSN on commercial motor vehicle operators' licenses (21).
1986	Higher Education Amendments of 1986 (P.L. 99-498) required that student loan applicants submit their SSN as a condition of eligibility (22).
1988	Housing and Community Development Act of 1987 (P.L. 100-242) authorized the Secretary of HUD to require disclosure of a person's SSN as a condition of eligibility for any HUD program (23).
1988	beginning November 1, 1990, a State to obtain the SSNs of the parents when issuing a birth certificate (24).
1988	Authorized a State and/or any blood donation facility to use SSNs to identify blood donors (25).
1990	required an SSN for eligibility for benefits from the Department of Veterans Affairs (DVA) (26).
1994	authorized the use of the SSN for jury selection (27).
1994	authorized cross-matching of SSNs and Employer Identification Numbers maintained by the Department of Agriculture with other Federal agencies for the purpose of investigating both food stamp fraud and violations of other Federal laws (28).
1994	authorized the use of the SSN by the Department of Labor in administration of Federal workers' compensation laws (29)
1996	Section 317 provided that State child support enforcement procedures require the SSN of any applicant for a professional license (30), commercial driver's license (31), occupational license (32), or marriage license (33) be recorded on the application.
1996	The SSN of any person subject to a divorce decree, (34) support order, (35)or paternity determination or acknowledgement (36) would have to be placed in the pertinent records.
1996	SSNs are required on death certificates. (37)
1998	Identity Theft and Assumption Deterrence Act of 1998 (P.L. 105-318) defines "means of identification" to include name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, and employer or taxpayer identification number; and
2005	Prohibits Federal, State, and local governments from displaying SSNs, or any derivative thereof, on drivers' licenses, motor vehicle registrations, or other identification documents issued by State departments of motor vehicles.